NOTES ON TENANT-RIGHT.

ON

RIGHTS TO SUB-SETTLEMENT.

AND ON

RIGHTS OF JAGHEERDARS

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EXTRACTS FROM OFFICIAL PAPERS

ON

TENANT-RIGHT, ON RIGHT TO SUB-SETTLEMENT,

AND ON

RIGHTS OF JAGHEERDARS.

FROM SECRETARY TO GOVERNMENT, TO SECRETARY, BOARD OF REVENUE, *North-Western Provinces* (*No.* 1331.).—*Dated Nynee Tal, the* 16*th July*, 1868.

IN continuation of G. O. No. 785, dated the 12th ultimo, in which the Board were requested to furnish Government with a report on the petition of Cheda Lall, Moonsiff of Meerut, with reference to his application to be admitted to the settlement of Mouzah Koobee, Pergunnah Umroha, Zillah Moradabad, I am directed to state, that when those orders were issued, the only exposition before the Lieutenant-Governor of the circumstances of the estate was that contained in the Board's Letter dated the 19th March, 1867, founded upon the personal enquiry of the late Junior Member, Mr. Cust, at Moradabad. Throughout this document, the nuzzurana holder is styled simply "the assignee of the Government revenue," and his claims are placed solely upon the strength of that position. It was upon the assumption of the title of the nuzzuranadar being thus limited that the orders of the 12th ultimo were written, in which the applicability of Section 10, Regulation VII. of 1822, was questioned, and that of Section 17 suggested. The Lieutenant-Governor has now had an opportunity of receiving from the Collector of Moradabad, while at that station, an explanation of the

tenure, and has directed me to communicate the following instructions.

2. It appears that the sole and exclusive management of the cultivated portion of the estate is vested by prescription in the nuzzuranadar, by whom alone the agricultural arrangements are concluded. How long this has been the case nowhere appears; but the presumption is that the prescription runs back beyond the reach of evidence. To call a landholder exercising these rights of proprietorship simply an assignee of the Government revenue is to mislead. He may have been that and no more at the first: he certainly stands in a very different position now.

3. On the other hand, the ex-zemindars are in the enjoyment of certain perquisites, including a cess of about one-eighth on money payments, and one-sixteenth on rents in kind; also rents on houses and sayer. But in the agricultural management of the estate the ex-zemindars have no concern or voice whatever.

4. Under these circumstances, the appeal of the ex-zemindars is not entitled to consideration. Their prescriptive rights—all that they have been able, time out of mind, to preserve of their ancient property—are secured to them, not only by law, but by a special agreement entered into by the nuzzuranadar. To insist on more than this would be to unsettle a state of property which, however grafted on an original wrong, has now grown up, and must be recognized.

5. It is true that other considerations have led to a different treatment in the very similar case of Mahomedpore Wavie in the same district. In that case, the Government was impressed with the inconvenience and harassment to which the tenants were exposed by a double demand,—the rents being due to the maâfeedar, and cesses on the rents, as in the foregoing case, to the ex-zemindar. The matter was much discussed prior to the Mutiny, and suggestions were

made for easing the tenants by making an absolute settlement with one of the parties, the other being provided for by a consolidated payment. In 1862, it was assumed possibly on insufficient evidence, that the title of zemindars to settlement was clear, and settlement was accordingly made with them. The High Court has ruled, that, in so deciding, the Executive Government acted within its competency, as by law it was free to make the settlement with either party; but the Court, at the same time, took care to say that it expressed no opinion on the justness or propriety of the measure. The case of Mahomedpore Wavie having been definitely disposed of, and the settlement sanctioned by Government, is not now open to review. But the Collector of Moradabad has informed the Lieutenant-Governor that there are many others similarly circumstanced; and that the course pursued with respect to that case has produced an uneasy feeling among the privileged holders with whom settlement has been made. It appears to His Honor that in all such cases, where the facts correspond with those of Koobee, the same course as that adopted in its settlement should be followed.

6. The class of tenures now under consideration resemble in many points the properties largely prevalent in Oudh, in which a supervening title has crushed out, more or less, the rights and privileges of the original holders. It has been held, in the lengthened discussion which the state of things in that province has given rise to, that (apart from all question of sunnud rights) the most expedient and just course is to sustain the ex-proprietors in their surviving rights and privileges, and no more; that is to say, where the usurpation of the superior is of long standing. Where the usurpation is of recent date, the claim of the ex-proprietors to complete restoration must of course be tried and decided on its merits; but where the usurped title has long existed, then the claim of the former proprietors has in reality become obsolete, and "it is not our business to resuscitate titles that have become defunct."

7. As pointed out by Mr. Mardorson, this course is no other than that inculcated by Mr. Thomason, in his rules* for the disposal of maâfee tenures in 1848; and it nearly resembles that indicated, likewise by Mr. Thomason, for the settlement of the Sukrawah jagheer.†

* "If it be found that the maâfeedars have usually managed the estate, and made the collections kham, but that there exist in others than the maâfeedars indications of proprietary rights which may be preserved and maintained under Section 2, Regulation XIII. of 1825, the maâfeedars should be declared zemindars, and the existing privileges of the original proprietors maintained."—*29th January*, 1848, *Despatch I., p.* 432.

† See p. 808 of Oudh Blue Book, Calcutta, 1867.

8. At the same time, it cannot be doubted but that the perpetuation of the double title prevalent in such estates as those under consideration, by virtue of which the tenants are subject to demands for rent and cesses from two different quarters, is in itself objectionable. It might, however, be possible to effect some arrangement by which the claims of the ex-proprietors should be met, and the double title over the same area obviated. In Oudh, a weak title of a corresponding character has been ordinarily compensated by a full *nankar* grant; and in Sukrawah it was met by the recognition of a separate proprietorship in "a nankar in land (otherwise called do-biswace), the rental of which shall be equal to one-tenth of the rental of the whole village." So, in the present cases, there appears no reason why a similar compromise should not be arrived at. The value of the cesses and other receipts and privileges would be estimated, and a portion of the estate assigned, the rental of which should be in lieu of those receipts and privileges. There is no legal power for enforcing such an arrangement; but if its advantages were explained, no doubt it might be found possible to persuade the parties concerned to agree to it. We should then have two separate properties, each held on a full and exclusive title, instead of the existing imperfect rights of two parties in the same land. The approaching settlement will afford

Oudh Blue Book, pp. 808 and 859.

special facilities for carrying such an arrangement, if it be found practicable, into effect.

9. It would probably be advantageous to officers who have to deal with such tenures to make themselves familiar with the course of the discussions on the similar tenures in Oudh. There appeared some doubt whether the Oudh Blue Book was avilable in the Collector's Office. His Honor was under the impression that it had been distributed to all District Officers. Probably, from the proceedings having been so voluminous, the passages bearing on the corresponding state of things in these Provinces may ordinarily escape attention. It might be useful, perhaps, to extract portions of the discussions for the mere convenient perusal of our officers.

R. SIMSON,

Secy. to Govt., N. W. P.

Extract from Note by the Hon'ble W. Muir, Foreign Secretary, Govt. of India, dated the 4th September, 1866, on the Assessment of Sub-proprietary Talookdars in Oudh.

Benefit anticipated from dividing off the talooqdaree village in proportion t the talooqdaree and zemindaree interests.

The suggestion raised by Mr. Strachey, in his 16th paragraph, for the complete and conclusive severance of the talooqdaree and zemindaree title, in any estates in which this can be effected by an amicable partition between the two, appears to me deserving of much encouragement. Although Lord Canning's Despatches in 1858 laid down that "the primary condition of all landed tenures in Oudh was the recognition of the superior right of Talooqdars," and that this was "the ancient indigenous and cherished system of the country," yet in 1859 it was equally acknowledged by the same statesman that the maintenance of a double, or a burdened, title was in itself an evil. The talooqdaree tenure is no doubt well suited to unquiet times, when the feudal relation proves beneficial to both parties:—to the inferior in being protected from oppression and spoliation; and to the superior, in the support derived from a large body of retainers. But, under a powerful Government, and a quiet and orderly administration, it is a vicious and defective system, which affords to neither party the benefits of an absolute and exclusive title. If, then, the parties can be persuaded to divide the land, in proportion to their respective interests, into two perfect and independent properties, a great object will have been accomplished. Instead of a mixed title and a burdened management, there will be substituted two separate properties on a perfect and exclusive title. I understood Maharajah Maun Singh, when lately at Simla, cordially to approve the proposal.

No. II.

On that which constitutes Right to Sub-settlement, on the principles of Assessment in such cases, and on the Rights of Jagheerdars.

I will consider first, the nature and incidents of the zemindaree right in its native form.

NATIVE CUSTOM.

Nature and incidents of village proprietorship under Native Governments.

Throughout India the Crown was in theory entitled to the entire rent payable by the cultivator.* Where the ryotwaree tenure prevailed, the rents were collected direct by the Crown or by a Government nominee, who received certain perquisites for the task.

Where village proprietorship prevailed, the rents were collected by the proprietor, and he was responsible for the entire sum to the Government. For special reasons the proprietor might be temporarily set aside, and the rents collected by a Government nominee. In either case, the proprietor was entitled to hold a portion of the estate rent-free, or at a privileged rent, in recognition of his proprietorship. Such land was called *nankar*, *seer*, or *malikana*.

For the convenience and security of Government it was customary, instead of making the proprietor render an account of the rents, to estimate the sum of them, and after deducting his privileged holding, to take an engagement (kabooluut) from him for the amount. The transaction then assumed the form of a lease; the proprietor was responsible for the sum specified: if his rents fell below it, he was a loser by so much; if they exceeded, he was a gainer,—but not always very secure of his gain under Governments that were no respecters of contract. The lease was made ordina-

* The normal maximum of rent throughout India was one half of the gross produce. "A firman of Aurungzebe's determines that the Sovereign's share of the produce shall never exceed one half."—Harington, III., 233, 323, *et seq.*

rily at the beginning of the agricultural season, but was often subject to revision towards its close. This system was called, in Oudh parlance, holding *pucka*, or on contract; that described in the preceding paragraph holding *kutcha*, or without contract.

Wherever the zemindaree tenure exists, the proprietor was habitually admitted to contract; he had the option of declining the terms of the contract, if too severe: and in this event, whether the rents were collected by Government direct or through another contractor, the proprietor retained his privileged lands.* But, though liable to dispossession for recusance, default, or other special cause, he retained the right again to contract for his estate.

Rent and revenue under the native system synonymous.

From this account it will be obvious that the distinction between rent and revenue created by our limitation of the Government demand had no existence under the native rule; rent and revenue were convertible terms. The drawback allowed to the proprietor was given, not, as with us, in the shape of a ratable deduction from the estimated rental, but by the assignment of land, which was subtracted from the rent-roll.† This, with the perquisites of management, manorial receipts, and the "benefit from those hidden sources which the officers of Government were unable to explore‡" (in other words, embezzlement from the rental) formed the only sources of proprietary income.

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*So, also, when they mortgaged their estates, the proprietors ordinarily retained these beneficial holdings.

† Thus Todur Mull "left with the zemindars the management of their lands, and concluded a settlement of the revenue with them; assigning to them a portion of the land, or its produce, for their immediate use and subsistence, under the denomination of *nankar*."—Mr. Shore's Minute of 1788, quoted by Harington, III., 234.

‡ Harington, III., 234.

Nankar, malikana, &c.

The amount of privileged land called "nankar," "malikana," &c., was not fixed at any invariable proportion of the estate. Throughout the North-West, however, it is very generally held that the proprietor was, under ancient custom, entitled to receive a proportion equal to one-tenth of the area of assets.

It is confirmatory of the weaker origin of the zemindaree tenure in Bengal, that the scale of nankar prevailing there was very much lower than in Behar and the Western Provinces. In Behar, writes Mr. Shore, the Zemindars "possess and claim a right to malikana, whether they have charge of the collections or not. In Bengal they have nankar only, which does not in the aggregate exceed *one per cent.* on the revenues."*

Proprietary allowance generally one-tenth.

Harington's "Analysis," and the early Regulations, abound with evidence that in Behar and the provinces west of it, the customary drawback for the proprietor, even when excluded from management, was 10 per cent. In 1771 we find the Patna Council writing:—"This (10 per cent. on the produce)† we understand to be the ancient allowance agreeable to the constitution of the country Government,"—which provision the superior zemindars were bound to make for the "small zemindars and Talooqdars" if they declined to engage.‡

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* Harington, III., p. 244. Indeed, the allowances may be held in Bengal to have been more for *service* than in virtue of proprietorship.—*Ibid.* 289. It will be observed that the term "malikana," or "*proprietary* assignment," was unknown in Bengal.

† By "the produce" the Council meant probably *the rental.* Ten per cent. of the gross produce would, of course, amount to much more.

‡ Harington, III., 294, *et seq.* See also Volume II., p. 246. The Amils "either took engagements from the landholders for the jumma of their respective estates or, if they, could not agree upon terms, the Amil appointed his own agents to collect the rents of the under-tenants, and paid the *malika* or proprietors of the land 10 per cent. malikana."

That a corresponding practice was observed in the Western Provinces will be evident from the enactments quoted below *

And the name for the assignment of proprietary land current in the North-West, *do-biswaee* (or two biswahs in the beegah of 20 biswahs), stamps the proportion of one-tenth as common wherever village proprietorship prevailed.

Normal position of village proprietorship.

The normal state, then, of village proprietorship in the North-West was this: that the proprietor was allowed to enjoy a privileged holding (nankar) of about one-tenth of the estate, or of its rental (in other words, of the Crown assessment); that he had a claim to hold this, whether he was responsible for the revenue, or whether he was temporarily supplanted by

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So, in the evidence of the Nazim of Behar, "malikana, in Behar, is an allowance in money or land. The rate is 10 per cent. if in the latter; 10 beegahs in 100. Zemindars who were incapacitated, and whose lands were held *khass* (direct by the Crown), were allowed malikana."—Harington, III., p. 321.

* "Where a Zemindar may decline entering into engagements for his estate, he shall be allowed for the present the same nankar which he may have been accustomed to receive under the Government of the Nawab Vizier; and, in like manner, where the Board of Revenue may reject the claim of a Zemindar to enter into agreements with Government, and such Zemindar may have been in the receipt of nankar under the late Government, such rate of nankar shall be continued to him for the present; provided that, in either case, the rate of such allowance shall not exceed the sum of 10 per cent on the jumma of the estate."—Regulation XXVII., 1803, Section 53, Clause 5.

See also Sections 8 and 16, Reg. IX. 1805. 8. "Art VII. Those Zemindars who may decline entering into engagements for their estates, as also those Zemindars whose officers may be rejected by Government, shall for the present be allowed the same nankar which they have hitherto received from the ruling power for the time being; provided the rate of such nankar shall not, in either of the cases above stated, exceed 10 per cent. on the jumma of the estate."

16. "Art. XV. In concluding the settlement of the land revenue in the territories mentioned in this proclamation, at the commencement of the year 1213 Fusice, the allowance of nankar to such of the Zemindars

another collector; that the possession of nankar was *primâ facie* evidence of proprietorship * in virtue of which he retained the title, after temporary supersession, again to engage as collector of the rents on behalf of the Exchequer.†

How affected by supervening claims of Talooqdar or Jagheerdar.

This state of things, however, was liable to change when a superior intervened either as Talooqdar or Jagheerdar. The position of these was, as regards the inferior holders, very similar: the Talooqdar collecting the customary assessment for the Crown; the Jagheerdar, as assignee of the Crown, for himself. Theoretically, the Jagheerdar was in the native system simply the representative and substitute of the Government, entitled to demand only what it would have demanded, and bound to respect the rights which it would have respected.‡ So with the Talooqdar:§ the village

as may engage for their lands shall be regulated by deducting the amount of the nankar from the jummas, and taking engagements from the Zemindars for the net residue; provided that the deduction for nankar shall not in any instance exceed 10 per cent. on the net jumma."

* I say *primâ facie* because nankar lands were often granted to the non-proprietary Moquddum put in charge as head ryot of his village. There is no practical danger of confounding this class with the village Zemindar, though the latter also is sometimes called "Moquddum."—See Mr. Wingfield's Report, No. 2435, dated 1st August, 1864.

† Thus the Nazim of Behar stated:—"*Malikana* is the unalienable (indefeasible?) right of proprietorship."—Harington, III., p. 321.

‡ Thus the Nazim of Behar deposed:—"The Emperor is proprietor of the revenue issuing out of the territory under his authority; but he is not the *proprietor* of the soil. Hence it is that when he grants *aymas*, *altumghas*, and *jaghcers*, he only transfers the revenue from himself to the grantee."—Harington III., p. 329.

"Malikana is the right of the proprietor of land; and therefore, if he received it under the ruler, how could the Altumghadar, Jagherdar, &c., withhold it? Whatever be the amount, it is indiscriminately allowed by the one party as by the other."—*Ibid.*, p. 322.

§ I speak here of the Talookdar not in reference to his own ancestral estates or to lands acquired by the sword, but to estates, the proprietors of which voluntarily came under his protection, or which were made over to him by the Government for the collection of the revenue.

proprietors were responsible to him for the same revenue as that for which they would have been responsible to the Crown; the Talooqdar paid this to the Government, receiving in return not a fixed drawback (such as is created by our limitation of the Government demand), but a *nankar*, in the shape of certain estates held altogether free.

Various degrees of preservation in which village proprietorship is found in a talooqa.

Such was the theory; but in practice the case was often very different. Both Talooqdars and Jagheerdars frequently encroached upon the rights and privileges of the village proprietors. Some they ousted altogether; others they left in possession of their privileged lands, assuming to themselves the management and possession of the rest of the estate. In proportion to their own power and to the weakness of the proprietors, they arbitrarily enhanced their demands. Sometimes they pushed their exactions and oppression so far as to crush the village Zemindars, who, in their difficulties, were glad to execute bonds assigning away their rights to the superior. By such means the old proprietors were occasionally stripped of every vestige of proprietary right, and reduced to the position of ordinary cultivators; or, losing the rest of the village, they retained possession of their "seer" and "nankar" fields; or, if they clung to the whole cultivated portion of the estate, they lost hold of the jungle and waste; or they were liable, perhaps, to only occasional exclusion; or they might be in a position entirely to vindicate their rights, and maintain their proprietorship intact. It is thus, in reference to the character and force of the Superior, the number, persistence, and power of the proprietary body, the position of the estate, the length of time during which it may have been incorporated in the Chiefship, &c., that we find villages in a talooqa or jagheer with every difference and shade of tenure,—from estates in which the old proprietors have fallen to the level of common ryots, to those in which village proprietorship is in full and active force.

As regards jagheers, I know no better illustration of the manner in which village proprietorship may be weakened

or extinguished than that of Pergunnah Sukrawah, in Zillah Furruckabad, the history and settlement of which have been detailed in an interesting report by Mr. Francis Horsly Robinson* in 1847. For an example of the corresponding process in talooqas, I may refer to the family domains of the Rajah of Benares, in which the former Rajahs set themselves to trample out proprietary rights, and with such success, that out of 2,000 villages no vestige of such rights remained in 1,400.†

Custom in Oudh.

View of the subject presented in Oudh.

But the clearest and freshest view which has been given us of the many phases of proprietary right caused by the action of the superior holder is that presented by Oudh. Here, instead of dealing with rights as influenced and modified by our own laws, and, in order to trace their origin, looking back through a long vista of years to the dim and partial outlines sketched in our early records, we find agricultural communities as they actually existed under native rule. Change and encroachment, ceaselessly at work under an arbitrary and lawless administration, were suddenly arrested by the annexation of the province; and the relative rights of inferior and superior, of the old proprietor and the recent invader, fixed as they stood at the moment of our accession. The state of things thus brought to view is quite in conformity with the early authorities before quoted, if we make due allowance for the fact that after the death of Saâdut Ali Khan (1814), the growth of Talooqdars was stimulated to the utmost by the imbecility of the Government at Lucknow. "Probably," writes Mr. Wingfield, "half the villages that do not form the hereditary property of Talooqdars have

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* Selections from the Records of Government, North-Western Provinces, Vol. I., p. 77. I shall have to refer to it again on the principles of sub-settlement.

† See Mr. Duthoit's report, appended to my note on Tenant-right in Oudh.

been acquired since his time;" and their power was often quite beyond the control of the State.*

Revenue administration under the King of Oudh.

Mr. Carnegy, in a valuable paper on the nature and incidents of village proprietorship, describes the mode of settlement resorted to by the Oudh Government as follows:—Where the Zemindars held "pucka," *i. e.*, on contract, they collected the rents themselves and paid the sum contracted for. The Nazim assessed the Government demand, not at any fixed proportion of the rental, but at "the maximum sum it was considered possible for the estate to pay," due allowance being made for the recognized nankar.† Such settlement often held good during the Nazim's whole term of office. The revenue was sometimes collected direct by a Government official; this might be either at the instance of the proprietor himself seeking the aid of the State, or in consequence of default, failure of security, &c. But such intervention did not necessarily relieve the Zemindar from his contract; so that he might still hold "pucka," though not himself collecting the rents.‡

Lease to proprietor, or holding "pucka."

Collection of revenue without a lease or "kutcha" management.

On the other hand, the proprietor (as with us) had the option of accepting the contract offered, or, if he considered it too high, of refusing. If he declined the contract, or fell into arrears, or failed to furnish security, &c., the estate might either be farmed to another, or the rents

* Mr. Wingfield's Memorandum, dated 18th September, 1865, paragraph 19. See also Colonel Sleeman's Journey through Oudh in 1850, *passim*.

† The account given by Mr. Carnegy of the comparatively recent and local origin of "nankar" can hardly be correct, seeing that we find nankar and malikana very much in the proportion in which we find it in Oudh as an ancient institution all over the North-West.

‡ See Colonel Sleeman's account of the Jumog System, Vol. I., p. 203.

might be collected on behalf of Government without any contract for a stipulated assessment. The latter plan was called holding the estate *kham*, or "kutcha." But even in this case "the Government officials were in the habit of making over the collections to the Zemindars out of (*i. e.*, not under) engagement, taking an agreement from them to pay the full amount realized into the Government Treasury." The Zemindar then held his nankar lands free of rent, and the seer which he cultivated with his own stock, was also held free or at a privileged rate.

Thus to hold "pucka," or on contract, while always a *primâ facie* indication of proprietorship, did not necessarily imply that the Zemindar was in rent-collecting management; while, on the other hand, he might still be in rent-collecting possession, although not holding on contract; *i. e.*, although the rents were collected "kutcha."

Such was the procedure where the Zemindar held direct from Government, without the intervention of a Talooqdar. Where a Talookdar intervened, the treatment was somewhat different. So far as "pucka" holdings, that is, settlements on contract, are concerned, the Talooqdar proceeded very much in the same way as the Government. But if an estate was held "kutcha," the Zemindars were ordinarily ousted for the time from the function of collecting the rents: "the ex-proprietors were only employed to make the collections when they happened to have accepted the service (civil or military) of the Talooqdar or proprietor, and they then had to account for the full amount collected, receiving their pay as a remission;" in that case they held their seer, nankar, and other perquisites, "in addition to the remission in lieu of wages."

Difference between "kutcha" management by the Government direct, and by a Talookdar.

In his second memorandum, Mr. Carnegy argues that the seer and nankar holdings did not form the sole measure of the zemindar's right. These holdings bore no fixed proportion

to the rent of an estate, and in some cases we do not find them assigned at all; yet this is not regarded as affecting the proprietary title of the zemindar He is admitted to possess an inherent right to the management of his estate, and ordinarily to hold it under contract; *i. e.*, "pucka." Zemindars are even found withdrawing their estates from a talooqa, and reverting of their own motion to direct engagements with Government, or attaching themselves to another Talooqdar. That, under the exactions of the Superior, they often parted with their rights for a trifling consideration, or that without any such pretext they were violently ousted from them, is evidence of the insecurity of life and property in Oudh, but no evidence that rights did not exist. The old proprietors may have fallen out of possession, and the Talooqdar, by continuous direct management (kutcha), may have formed in his own favour a new and exclusive prescription; but this will not affect the title of those who did maintain their position up to the advent of the British Government, or whose right to the same was alive and existing at that moment.

It may be useful to quote Mr. Carnegy's statement at length:—

"When villages were incorporated into talooqas without purchase, and the possession of the late zemindars remained undisturbed, it was never the rule to set apart seer, assign nankar, and fix the Government demand, with any reference whatever to the gross rental. In these cases, it was very much the custom for the Talooqdar to let the ex-proprietor down gently by taking no more from him for a few years than the latter formerly paid to the State. He would afterwards by degrees screw up the jumma, but never to such an extent that there should absolutely be no portion of the gross rental left to the ex-proprietors, and this in addition to the seer and sayer of the village. Moreover, it was by no means the invariable rule for Talooqdars not to assess sub-proprietary seer. It was of frequent occurrence for the holders of the latter to have to pay upon their seer upon the well-known Baach principle; and this was more especially the case when the properties of communities consisting of numerous members were absorbed into talooqas, because in this class of cases it was by no means uncommon for the great majority of the cultivation, or, perhaps, the whole of it, to be held as seer. In the cases of which we are speaking, *viz.*, villages incorporated without purchase, instances would

arise when the Talooqdar had resort to direct management, and on such occasions he would allow the former proprietors (1) to hold all or some of their seer at favorable rates; or (2) he would give them a small money allowance instead; or (3) it might be that he turned them out altogether, without showing them any consideration whatsoever.

"In this class of unpurchased tenures, it was far from the impression of the former proprietors that it was a matter contingent solely on the will and pleasure of the Talooqdar to hold pucka or khám at his option; on the contrary, they believed that in all justice they had the most undeniable right themselves to hold pucka under the Talooqdar, to the extent (and I know many instances in which the right was exercised) that they could even withdraw their village altogether from a talooqa and themselves engage for it direct with the Government, or include it in the rent-roll on similar terms of some other estate. In such cases as these, how is it possible to say that the rights of the sub-proprietors under the native rule amounted to no more than the profits of their seer and nankar? And on what principle of justice could we now confine their sub-proprietary interests to these perquisites alone?

"Proceeding now to the consideration of villages held under purchase by Talooqdars, it will be found that in this class of cases the former proprietors have been treated in one of the two following ways:—

"Either they will have had some consideration shown to them at the time of purchase, known here as 'Dehdaree,' and which might be an annual money allowance, or a certain portion of rent free or low-rated land; or they have had no such consideration shown, and have been reduced to the status of mere tenants-at-will.

"The conclusion to be drawn from the above particulars relating to villages absorbed into talooqas, whether by trust, force, purchase, or other means, is, that it was not an invariable rule for the seer and nankar of proprietors or sub-proprietors to be fixed and determined quantities. It follows, I think, that in estates incorporated under no valid tenure, and for which claims are advanced which are cognizable under the law of limitations, no injustice nor breach of sunnud is committed in decreeing a sub-proprietary status."

Similarly, in reference to the proprietary right being something more than a simple claim to nankar lands, he says:—

"When it has thus been made evident that the Government revenue and the proprietary remission were fixed and determined upon no known rule or principle of computation, it cannot be laid down that the zemindar's rights consisted solely in the possession of his nankar and seer. Accepting, for the sake of argument, Captain MacAndrew's exposition of the question as correct, can it be believed that in those estates, and they

are numerous, where the proprietor enjoyed no nankar remission, his rights consisted in no more than the few acres of seer constituting the home farm, on which alone he was dependent for his support and profit?

"But I cannot accept this position as correct. The fact is, no attempt was ever made under the native rule to define how much of the gross produce should go to the State and how much to the proprietors. Although it may be established that, under direct management, the zemindar got no more than the profit arising out of his seer and nankar, it must not on this account be considered as proved that these constituted the sole rights of the Zemindar. The system under which Nazims held kham, leaving the proprietors their nankar and seer, was very much akin to the process known to our own revenue system as kham tehseel, under which the profits are sequestered, and no rendering of accounts at the end of the operation is deemed necessary."

Mr. Carnegy also shows that "pucka" was a phrase applied only to a lease when held by a *proprietor*; when a lease was held by one having no proprietary title, it was called an *ijara*, and the holder a *moostâjir*; so also *kutcha* is the converse of pucka, and when used to signify direct management of an estate by the talookdar, is in itself significant of the existence of a sub-proprietary interest* :—

"In former days, when an *ex-proprietor* leased his village for a fixed sum, he was said to hold it pucka, whether any of those rights which we now define as *sub-proprietary* were still reserved by him or not. On the other hand, if a *stranger* leased the village, the transaction was invariably designated an *ijara*, or as *moostajiree*, and *never* as pucka. The word *theeka* was rarely, if ever, used before our time.

"The words pucka and kutcha were always used under the Kings' Government antithetically, and they must be held to have had a direct connection with former *rights*, because, as has already been shown, if a stranger leased, he did not hold *pucka*. If there were no rights, there would have been no use for the antithetical word *kutcha*, and it therefore follows that where the two words *pucka* and *kutcha* are found in use, more than a farming or leasing tenure is at stake.

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* Perhaps Mr. Carnegy pushes this deduction a little too far. I believe that if during the currency of a farm, even to a *stranger*, the contract were at any time put in abeyance, and the rents collected direct from the cultivators, it would have been said colloquially that the estate had been "made kutcha."

"There is in the minds of the claimants of sub-proprietary tenures a vast distinction between *pucka* and *cheeta*. By the former word they unmistakeably mean what we have now designated a "pookhtadaree tenure;" but the rendering which they would wish us to accept is wrong, the correct meaning being that which I have already above given."

Procedure under the Oudh Rules for maintaining rights of sub-proprietors.

Such being the state of things, the Oudh Rules provide that the status of rights, as we found it at the time of annexation, shall be maintained. Briefly, a retrospect is allowed of 12 years from 1856, and no right is recognized which was not enjoyed within that period. Ancient rights not falling within this description are not revived; they are held to have died out by disuse, or by the predominance of an adverse right; but rights in possession, even if of a limited nature, are carefully defined and perpetuated. Thus, the Zemindar who has kept alive his right of property over the whole area of an estate will be entitled to a sub-settlement of the whole. If his title over the whole has become obsolete, but is retained over a part (as, *e. g.*, over a *puttee* or sub-division, or only over the nankar and seer lands), he will have no claim to a sub-settlement of the whole estate, but only to a settlement of the specific lands to which his title has been kept alive.

PROCEDURE IN N. W. P.

Oudh system of sub-settlement compared with the North-Western Provinces system.

Before entering on the evidence necessary to prove that a title has been kept alive over the whole area of an estate, and that the Zemindar is consequently entitled to a sub-settlement, it will, perhaps, make the subject more clear if I endeavour to show wherein the Oudh system differs from that formerly pursued in the settlement of the North-Western Provinces.

Law and practice as to sub-settlements in the North-Western Provinces.

The law as respects these provinces is contained in Regulation VII., 1822, which, in special advertence to cases like the present, authorizes the Collector to make "a mofussil settlement" of such lands as he might find to be "owned and occupied" by persons holding

under the Talooqdar, and "possessing an heritable and transferable property therein, or an hereditary right of occupancy, subject to the payment of a fixed rent."*

The terms of this section might, perhaps, be construed to sanction a plan of settlement similar to that now pursued in Oudh; but unfortunately the words "mofussil settlement" were taken exclusively in the sense of a sub-settlement, that is, a *village* settlement. They were held to apply to cases in which the old proprietary stock had retained their hold upon the village or estate as such; and, having kept alive their rights in it, were now entitled to a settlement of the whole lands comprised within its boundaries.

The law applied in the North-Western Provinces only to the sub settlement of entire villages.

Thus a class of claims was left wholly unprovided for; that, namely, in which the title of the old proprietors had been partially extinguished, no longer carrying with it the management of the whole estate, but merely the management of a portion; or, perhaps, the property in only a few fields held as

And not to cases where rights, having only partially survived, were confined to specific portions of an estate.

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* I quote the section at length:—

"In cases wherein any land appertaining to a mehal hitherto recognized as the talooka, zemindaree, or the like, of one or more Sudder Malgoozars, may be owned or occupied by other persons holding under the Sudder Malgoozar, and possessing an heritable and transferable property therein, or an hereditary right of occupancy, subject to the payment of a fixed rent, or of a rent determinable by a fixed principle, if the title of the said Sudder Malgoozar to engage for the revenue be upheld, and generally in cases wherein the tenure of an intermediate Malgoozar or manager between the Government and the proprietors or hereditary occupants of the soil may be maintained, whether the Government revenue be collected from Zemindar, Talookdar, or other hereditary intermediate Malgoozar, or the mehal be farmed or held khass, it shall be competent to the Collector, or other officer who may be employed in adjusting the jumma to be assessed on such mehal, with the sanction of the Board previously obtained, and subject to the orders and directions of that authority, to make a mofussil settlement with each of the proprietors or occupants aforesaid

seer or nankar. It is true that in our older provinces such cases must have been rare compared with Oudh; for, on the one hand (as shown in the note on tenant-right), it had from a very early period been the practice of our administration to separate and "emancipate" from the control of the Talooqdar estates claimed by village proprietors; and, on the other hand, where no such emancipation had taken place, the old Zemindars, who had long parted with the management of their estates, and held only *nankar*, were in danger of losing even that vestige of their ancient right, because our system did not recognize nankar, but threw it into the common stock of lands responsible for the Government demand. Thus, no doubt, under the operation of our laws, ex-zemindars entitled to hold as a remnant of their property certain nankar lands, fell often into the ranks of non-proprietary ryots, retaining, indeed, possession of their seer and nankar fields, but as simple hereditary cultivators at customary rents, and without any transferable title.

No appropriate provision made for this class of cases.

Tenures of this kind, though rare at the time of settlement under Regulation IX., 1833, must still have survived in the more extensive talooqas; and they must have existed in great numbers on our first assumption of the country. It was, therefore, an omission in our procedure that no provision was made for them. The old proprietors, whose rights had only partially survived, were either admitted to engagements for their entire villages,* or

for the land possessed by him, and to grant such proprietors or occupants pottahs defining the condition on which they are to hold their land, whether subordinate to the Sudder Malgoozar, or to the farmer or officer of Government employed in the khass management."—Cl. 2, Sec. 10, Reg. VII., 1822.

* So Mr. John Thornton:—"One point was unanimously agreed upon, namely, that it was impossible to give either due protection or due satisfaction to the claimants of the under-tenure without investing them with the entire management of their respective villages. Their claim was to be put upon the same footing with that on which their brethren outside the talooqa *now* stood under *our* system."—Appendix to *Directions to Settlement Officers*, 1st Edition, page 157 (omitted in last edition).

their claim was altogether thrown out. Failing a village settlement, they were not, as in Oudh, maintained in the *proprietary* possession of their seer or nankar.

Defects under the North-Western Provinces system.

It was, no doubt, this defect in our procedure which sometimes led to the recognition of the right of sub-settlement on insufficient grounds. Rather than throw out the claim of the old proprietors, and reduce them to the level of ordinary cultivators, some officers went beyond their legal competency, and assigned to them the sub-settlement of an entire estate when it was not wholly "owned or occupied," by them, but only a portion of it. Injustice must be done either way: if they decreed in favor of the village proprietor, the Talooqdar was excluded from rights which, however acquired at first, had been cured by long prescription; if against the village proprietor, he, too, was ousted of privileges, partial, it is true, but still valuable—the remnant of ancient proprietary right. And as the old proprietor was the weaker of the two, and had generally lost his ancient rights by wrong or violence, the sympathies of the officers engaged in the settlement not unfrequently decided the case in his favor, to the detriment of the prescriptive rights of the Talooqdar. In such case the Talookdar received a money allowance; but that was an inadequate compensation for the rights of management hitherto enjoyed by him.

But Board's rules did not warrant recognition of sub-proprietary right unless possession and ownership was proved.

It must, however, be borne in mind that much a course was not countenanced by Robert Merttins Bird's instructions. These invariably implied that the village proprietors were only to be maintained when found to hold "a right of management and occupancy, and were actually in possession."

"A talooqdaree right, vested in some powerful Rajah, over a whole tract, is found to exist with a *right of management and occupancy* in particular villages vested in the village communities."*

* Paragraph 209.—Settlement Circular No. 1, dated April, 1839.

"The Board would not consider themselves warranted in attempting, on the ground of expediency, to create rights which did not exist; but they consider that strong evidence is found of the existence of the ancient right of property, which they hold the Collector bound to recognize, the *parties being actually in possession.*"*

Subsequently to the settlement under Regulation IX., 1833, instructions less favorable to the Talooqdar were issued Mr. Thomason.

But some years subsequently, the balance thus held by the Revenue Board's order evenly between the two parties, was turned in favor of the village proprietors and against the Talookdars. In 1845, Mr. Thomason issued a Circular containing a note by his Secretary, Mr. John Thornton, in which the chief stress of proof is laid upon the proprietary *origin* of the family claiming a village; and the retention of possession and management is made a secondary consideration.†

Principle advocated by Mr. Davies in some respects similar to that laid down by Mr. Thornton.

It will be observed that the principles advocated by Mr. Davies bear some affinity to those laid down by Mr. Thonrton. If the proprietary origin of the claimant be undoubted, and if he is in possession of

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* "*Ibid*, Section 218.

† "Again, the rights of the village communities have never been so completely in abeyance as that their recognition should be barred by the Statute of Limitations. They may, or may not, have held a lease (theeka) under the Talooqdar. Where this has occurred, it was a distinct revival of their original claim and tenure. But even where this has not been the case, it has hardly ever happened that they have been reduced to the mere rank of common ryots; whatever privileges they may have enjoyed above such ryots may be considered as indications of their original condition, and as keeping alive their claim to be restored to that condition."—*Directions to Settlement Officers*, p. 161, 1st edition. [Mr. Thornton's Note has been omitted from the 2nd edition.]

It is to be remembered that these instructions were issued several years after the settlements in the North-Western Provinces had been completed, and affected the disposal only of such stray cases as came up for adjudication under the administration of Mr. Thomason. The great mass of these claims were settled under the rule of Mr. R. Merttins Bird, which, as I have shown, was clear and impartial.

nankar lands, Mr. Davies holds that the right to a sub-settlement is (apart from any political compromise made by Government) indefeasible; whereas it appears to me, that to justify a sub-settlement, the claimants must show that they have kept alive their title (by some species of possession or management) over the entire area of their estate. In default of this, they must be content with the specific lands of which they have managed to retain the possession or control. It is not our business to resuscitate titles that have become defunct.

Sub-settlements in jagheers in the North-Western Provinces.

I should, however, notice that the treatment of Jagheerdars and the Zemindars subordinate to them has been both by enactment and practice, in the North-Western Provinces, more in accordance with right principle. On the resumption of a jagheer, it is competent to the Government to maintain the ex-jagheerdar in possession, if he has acquired a prescriptive right by actual occupancy and management. It is further provided that in such event the zemindar shall be maintained in the receipt of "the malikana or other proprietary due" which he had previously enjoyed.*

Sub-settlements in Pergunnah Sukrawah made on a system resembling that of Oudh.

The position of zemindars in confirmed jagheers is provided for by another enactment, which empowers the Collector to conclude a settlement with the zemindars on behalf of the jagheerdar "if satisfied that the applicants do possess an hereditary and transferable property in the land, or the produce or rent thereof."† And although there is here no indication of the Oudh procedure for securing "nankar" and other existing privileges to the old proprietors whose rights have only partially survived, yet a system nearly resembling it was actually

* Regulation XIII., 1825.

† Regulation VII., 1822, Sec. 17.

pursued under instructions from Mr. Thomason in the settlement of Pergunnah Sukrawah, Zillah Furruckabad, in 1846.*

SUB-SETTLEMENT IN OUDH.—Rules for sub-settlement in Oudh.

After this digression (which, though I fear too long, may perhaps have thrown some light on the general principles involved), I proceed to the present question of the evidence required to warrant a sub-settlement in Oudh.

* The report of this settlement, which deserves perusal, will be found in the *Selections from the Records of Government, North-Western Provinces*, Vol. I., p. 77. Mr. Thomason, after a cursory investigation, drew up *Notes for the Guidance of Settlement Officers*, in which he directs the estates to be classified as follows:—

I.—"*Those mouzahs in which a settlement is to be made with the proprietors.*—Wherever there is a community of resident proprietors who are entitled to divide amongst them the profits of the village, and who, whenever the village has been held in *theekah* by one or more of their members, have shared the profits with the theekahdar, according to the village custom, a settlement should be formed with the proprietary community. It matters not whether the community have divided the land amongst them, or have not so divided it. The point to be looked to is, whether the theekahdars who engaged with the jagheerdar acted simply on their own account or as the representatives of a community. The settlement must be made in the same way as if the villages were khalsa.

II.—Where no such communities existed, "but certain persons are found resident in the village, or otherwise possessed of, or entitled to possess, proprietary rights in their own persons, whether or not they have uniformly or generally held a theekah of the village, they should have assigned to them a *nankar* in the land (otherwise called do-biswace), the rental of which shall be equal to the rental of the whole village. It should generally consist of their seer land. The nankar will be held rent-free, as his heritable and transferable proprietary." The rest of the village was left at the disposal of the jagheerdar.

III.—"Those mouzahs where no proprietors are found to exist. These become the absolute right of the jagheerdar * * * Some little favor may be shown in fixing the rates of those who have evidently some time or other possessed proprietary rights, of which they have been dispossessed for a period which precludes restitution to their full rights."

The report of the Commissioner, Mr. F. H. Robinson, explains in detail how these orders were carried out, and is instructive, as illustrating the causes of extinction of proprietary right, and the various degrees of vitality in which it was found to exist.

Where no rights are proved to have been exercised or enjoyed during the 12 years preceding February, 1856, beyond the possession of certain fields as "nankar," or "seer," held free or at privileged rates, the claimants are entitled to the recognition of a proprietary right in those fields only and to no more.*

Cases for decree of proprietary right in seer and nankar.

To justify a sub-settlement of a whole estate, or of any part of it beyond the lands in personal possession of the claimants, it is necessary to show that the title has been kept alive over the whole area claimed within the term of limitation. For this purpose (apart altogether from sunnuds and other entanglements) it seems reasonable to require that the claimants should have held under contract (*i. e.*, *pucka*) within the term of limitation.†

Evidence on which sub-settlement might be decreed apart from the sunnuds and promises of Government.

Mr. Wingfield is of opinion that ordinarily a lease held with *some degree of continuousness* would be an indispensable part of the evidence, yet he allows that there might be cases in which a single year's contract would suffice. "The Chief Commissioner knows of cases in which he would decree a sub-settlement when only one year's possession of a lease within the term of limitation had been proved."‡

Mr. Wingfield's opinion.

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* I presume that care is taken to provide that the terms on which the land is held are equally favorable with the best terms on which it was held within limitation. If the nankar was held free of rent altogether, it will of course continue so, however contrary this may be to our revenue system; for if assessed with its quota of the revenue, of course its value becomes so much less; and in that event its area would, to yield an equal value, have to be proportionately increased.

† There might be one apparent exception to this rule, in the case of *bhyachara* villages, which will be noticed hereafter.

‡ Chief Commissioner's letter dated 26th June, 1865, paragraph 20, p. 9.

Mr. Davies' opinion.

On the other hand, Mr. Davies holds, that if the claimants are proved to be the old proprietors, if they have not alienated their rights, and are in possession of nankar, they have (apart from the limitation agreed to by Government) an indefeasible title to a sub-settlement; but under the conditions accepted by the Viceroy, he admits the necessity of proving possession under lease subsequent to 1844. If, then, the old zemindars enjoying nankar have held under lease within the term of limitation for even a single year, Mr. Davies thinks there is, *ipso facto*, sufficient ground to decree a sub-settlement.

Too much weight attached by him to the holding of a lease, which might be temporary and casual.

I cannot see the necessity or the equity of this principle. The lease would only be one among other proofs of the title having been kept alive over the estate. If, as Mr. Carnegy says, it was the custom for Talooqdars when they excluded the proprietors from a contract (*i. e.*, held kutcha) to collect the rents directly themselves, and only to employ the ex-zemindars on that duty in the capacity of *servants*, the case would be rare in which a temporary and casual lease for one year, preceded and succeeded by a long period of direct management, would constitute evidence sufficient for a sub-settlement. We may suppose a case of this kind, in which the old zemindars had long ceased to exercise any control over their estate; in which, in fact, excepting their nankar, their zemindaree rights had entirely died out; here the Talooqdar might evidently give a farm of the estate to the old zemindars in a temporary and casual manner, just as he would do to a stranger. Such a lease ought not, therefore, *in itself*, even in conjunction with the holding of nankar, to be regarded as immediate and absolute proof of the existence of a full zemindaree title.

Collateral evidence necessary in addition to a temporary lease.

Collateral evidence of zemindaree interest over an estate having been kept alive would seem to be indispensable in addition to the enjoyment of a lease, where the

lease was not of a permanent and continuous character. Such evidence might be adduced in various shapes. The zemindar might always have had the management of his estate, arranged for its cultivation, given permission for breaking up the waste, exercised control over the jungle, and enjoyed the proprietary perquisites and sayer (manorial) products.* Aided and strengthened by such like proofs, a lease, otherwise to all appearance casual, might sustain the recognition of village proprietorship. It would, of course, be a matter for judicial determination whether the lease were in virtue of village proprietorship, or in virtue merely of service; in which latter case it would, I apprehend, prove little.†

Cases for sub-settlement of only a portion of an estate.

There may also be cases in which control and interference on the part of the proprietors were confined to a sub-division (puttee) of the estate, to the part actually under cultivation, or even to a portion of the cultivated area. In these cases the sub-settlement would fairly extend only to such portions.

Exceptional case of *bhyachara* villages.

There is, however, one class of claims in which it seems to me that there might have been an appearance of direct management on the part of the Talooqdar, while the

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* "In the case of the zemindar, the holder was in the receipt of nankar, seer, purjout, octroi duty, &c., and these perquisites were the only emblems of the zemindaree not existing in the case of holding by non-proprietors, and were always enjoyed by the zemindar, whether he executed the kuboolyut or not. Most of the zemindars considered such kuboolyut holding as derogatory."—*Report by the Settlement Officer of Seetapore.*

† It is not, however, easy always to distinguish whether the possession is in virtue purely of service or in virtue of proprietary right, or in virtue partly of one and partly of the other. See Mr. Wingfield's Settlement Ruling No. 1, at page 200 of "Settlement Circulars," and p.p. xxv. and xxviii., Appendix II., to Note on Tenant-right.

proprietary right was in reality kept alive by a village community over their whole lands. It is that of the *bhyachara* tenure, in which the whole, or nearly the whole, of the lands are held by a proprietary community, each cultivating his own property, and being responsible, by the village *baach* or distribution, for a rateable share of the demands of Government. There having been little or no distinction under the Native Government between rent and revenue, the Talooqdar might collect the ents from each of these village proprietors, and in appearance be holding the estate direct (kutcha), and yet the village proprietors might have been in effective possession of their prescriptive rights as village zemindars, with or without the right over the waste. In a case of this kind, it appears quite possible that there might be ground for a sub-settlement of the whole estate (with or without the waste, as the case might be) even had there been no lease at all. In such event, each holding or puttee would be responsible to the Talooqdar simply for the quota of revenue assessed upon it, with a rateable addition to cover the dues of the superior.

In what respects the Executive Government can properly express an opinion or interfere in the decision of such matters.

The points above adverted to must, of course, be the subject of independent decision by the Courts, and no course can be dictated to their judgment by the Executive Government. The Government, if it found that any line of judicial decision was proceeding in a manner involving general injustice, or in violation of

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Mr. Carnegy mentions this class of tenures in his Memorandum B., paragraph 7 :—"Moreover, it was by no means the invariable rule for the Talooqdars not to assess sub-proprietary *seer*. It was of frequent occurrence for the holders of the latter to have to pay upon their *seer* upon the well-known *baach* principle ; and this was more especially the case where the properties of communities consisting of numerous members were absorbed into talooqas, because in this class of cases it was by no means uncommon for the great majority of the cultivation, *or perhaps the whole of it*, to be held as *seer*."—Page 35.

engagements concluded in its political capacity, might interfere legislatively.

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JAGHEER VILLAGES.

It only remains to notice the principle to be observed in the settlement of jagheer villages.

Jagheer grant conferred no proprietary right.

The observations contained in the first portion of this Note establish the position, that the grant of a jaghoer was a simple assignment by the Crown of its own revenue, and conferred no proprietary right.

Jagheerdar may acquire proprietary right by prescription.

It has been objected that the Jagheerdar cannot acquire a title by prescription. Where, therefore, no zomindaree right adverse to the Jagheerdar is proved, he thinks that the proprietary title should be decreed to Government, even if the Jagheerdar be found to have long held possession. It is true that the Jagheerdar, in encroaching upon the rights of the Zemindar, may originally have committed an act of unjust usurpation; but the injustice may have been cured by prescription.

Where no other proprietary right is proved the Jagheerdar should be recognized as proprietor.

This view is supported by the enactments which I have quoted in a previous part of this Note, and by the precedent set by Mr. Thomason in the settlement of Pergunnah Sukrawah. On that occasion it was ruled that estates to which no proprietary right was proved "become the absolute right of the Jagheerdars."

It appears to me that the settlement of jagheers may be made upon precisely the same footing as of talookas.

FOREIGN OFFICE,
The 27th December, 1865.

W. MUIR.

Tenant Right in the N.-W. P. and other parts of India.

I observe three broad distinctions in the title under which land was found by us originally to be owned or managed throughout various parts of India :—

I.—Ryot occupancy or proprietorship.
II.—Official zemindarship.
III.—Village proprietorship.

The first signifies that the ryot is hereditary occupant or owner of his own individual holding. The last, *village proprietorship*, signifies that one or more persons, or a body of coparceners, possess proprietary right over all the lands (however occupied and including the waste) contained within the boundaries of their *village* or estate, the whole country being parcelled out into such village. "Village proprietors" may be either talooqdars, zemindars, putteedars, or members of a proprietary and cultivating brotherhood.

In a general sense it may be stated, that, on our accession to the empire, ryot proprietorship prevailed in the south of India, official zemindarship in Bengal, and village proprietorship in the North-Western Provinces. I will endeavour to show this more in detail, and to illustrate how each system affects the position of the agricultural community.

Ryot proprietorship.

MADRAS.—Throughout the greater part of Madras the normal state of the ryot is to hold immediately from the Crown; and, wherever he so holds without the intervention of any middleman, proprietary right is vested in the occupant of individual fields, or it has a tendency so to grow up, though often imperfectly, and shackled by special incidents.

Coorg.

To begin with the south-western coast, we find in Coorg the *junum*,† or hereditary ryot. He pays direct to Government at a light rate, but

Where the talooqdar holds as superior, the subordinate zemindars, &c., are the "village proprietors." Where there is no zemindar between the talooqdar and cultivator, the talooqdar is himself the "village proprietor."

† Commonly called *jumma* ryot.

on condition that he shall not alienate nor sublet the land, or even cultivate it otherwise than by his own household or by his slaves.* This is the most restricted form of property I have met with.

Coimbatore.

Crossing the peninsula, we come midway to Coimbatore and Dindigal, where the nauttumcar or gour ryot is recognized as the absolute proprietor of the soil; and, indeed, "in all the provinces south of Madras a property in the land is invested in the resident inhabitants of each village."†

"Alienation, even by subletting, is effectually prevented by the usage of the country, which decidedly forbids it, and the principle that obtains of regarding the proprietary right to the soil as originally vested in the Sovereign. He grants a certain quantity of land to a ryot at a certain annual rate, and for a time divests himself of his property. But the land has been granted to that particular individual and to no other; it has been let at a specific rate of tax and no other. Let another tenant be found there paying to the actual lessee a higher tax than that fixed by the sircar, and the lease is *ipso facto* annulled: the land falls again into the possession of the sovereign power, and is again at its disposal."—*Report by General Fraser, dated 30th August*, 1834.

An application has lately been made to permit the subletting of such lands. The object, it is said, of so strange a tenure, is to prevent the land falling into the hands of strangers and to uphold the Coorg nationality.

† *Fifth Report, Appendix* 31, *p.* 974, *et seq.*—These hereditary owners are also called *puttookut* ryots: besides them, there were in all villages other descriptions of ryots called *Vellala*, *Verwadus*, and *Poodoogoodies*. The nauttumcars, gours, or *mahajuns*, held a portion of each village rent-free; the various village servants and officers possessed lands for their support, but had no further claim to cultivate.

The villages were divided into *sircar* (in which the ryot pays direct) and *paliaput* villages; the latter being so called from polygars, or middlemen, to whom the estates had been assigned by Government for certain purposes. These became a kind of official zemindars; and I am informed by the Hon'ble Mr. Taylor that they so continue to the present day in Salem, Madura, and Arcot.

Mr. Hodgson, whose statements are quoted in the Fifth Report, generalizing from his own observation, concludes somewhat rashly that neither Government, nor its representative, the zemindar, is anywhere in India the absolute proprietor of the soil (paragraph 43). He holds, that, "from the

Tanjore.

In Tanjore and other districts, the *meerassidars* have a right of property in their holdings, freely and unconditionally transferable. These have sub-tenants called paracoodies,* who cultivate on their own stock, but are liable to be ousted.

Malabar.

"In Malabar individual proprietary right prevails throughout the province." There we find the *jemnum* tenure, "a fee-simple or hereditary right of possession," which can be leased or mortgaged. *Cuy kanum patum*, which also prevails, is called "a tenure by labor, or usufructuary tenure;" the jemnumkar assigns a portion of land to be fenced and stocked, in consideration of which the holding is enjoyed free of charge for 12 years. If resumed, which is seldom the case, compensation is given for the cost of improvement; otherwise the tenure is maintained at an easy rent.†

Canara.

In Canara we have the *mul guenies*, or proprietary tenants, divided into the *nair mul gueny* (or high caste) tenure by ancient prescription, and the *shud mul gueny*, by purchase; *chail gueny* is the tenant-at-will, from whom (as in Oudh) the landlords may get some additional rent whenever there is a higher offer.‡

most northern parts of India to Cape Comorin, the right of paying a defined rent, and no more, is a right inherent in all cultivators;" and that the "proprietary right is, therefore, no more than the right to collect from the cultivators that rent which custom has established."—*Page* 977. A useful lesson against crude and hasty generalizations!

* *Fifth Report, Appendix* 31, *p.* 829.—Sometimes a whole village belongs to a single Meerassidar or to a coparcenary body. In this case the tenure (called *yekabhogum* or *jamadayam*) must somewhat resemble the coparcenary tenure of Northern India.—*Page* 830. In the *warum* (or division of crops) we find, as in the North-Western Provinces, the high caste cultivator "receiving a higher *warum* than the rent," *i. e.*, paying a lower rent.—*Page* 831.

† *Ibid.*, pp. 134 & 799.—"Almost the whole of the land in Malabar, cultivated and uncultivated, is private property, and held by Jemnum right, which conveys full absolute property in the soil."

‡ *Ibid.*, p. 815.

In reference to these tenures the Collector in 1801 thus wrote :—

"In many cases the landlords have found it necessary to grant them *mul gueny tenures* ; *i. e.*, for ever, at a nxed rent. This species of tenure is nearly as good as a freehold. It descends from father to son, and from uncles to nephews. A tenant can in no case be ousted, but for non-payment of rent ; and, even in this case, not till he has been fully recompensed by his landlord for every lasting improvement he may have made to the land. A tenant without heirs may bequeath his tenure to any person he pleases ; the general custom, however, where there is no issue, is to adopt a son with the consent of the landlord. He can also sell his property in such lands. Some tenures of this sort are purchased ; others are not. There are *challi guenies*, or tenants-at-will, who, by courtesy, have become tenants in perpetuity ; these are such as have held lands of a superior landlord for two generations or more : in some cases, indeed, it has been extended to those who have held 50 years, and who, with the consent of the superior, have at different times made expensive improvements to their lands, or have levelled or brought others into cultivation : such lands are generally supposed to descend from father to son, for ever, at the original rent agreed on. The superior has the right either to raise his rent or oust his tenant ; but it is universally considered a stretch of power so unjust and illiberal that it is seldom or never resorted to ; at any rate, before it can be done, the tenant must be reimbursed in full for all lasting improvements. This custom, indeed, which is also extended by right to all tenants-at-will for a year even making improvements with the consent of their landlord, and, by courtesy, to those making them without his knowldge, is the grand fundamental system and prop of the Canara agricultural system, and is well worthy of imitation either in other parts of India or Europe. It alone may be said to have been the cause of half the land in Canara being brought into and kept in cultivation.*

Peddapore.

In Peddapore and Cuttamoor "a right is vested in the ryots which partakes more of what is termed in the southern provinces the *pashangary* tenure (*i. e.*, in which no sale of the right of occupancy is customary) than of the *adhikaree* tenure, under which the right of occupancy is considered a property transferable, subject to the obligations annexed to the possession of it."†

In the Tamil country generally, which more or less escaped Mahomedan aggression, and in which, consequently, the

* *Fifth Report*, p. 818. † *Ibid.*, p. 981.

Hindoo system might be expected to survive in its normal type, we see, besides the meerassidar or proprietor, a class of non-proprietary tenants, divided into *oolcoody*, or permanent, and *paracoody*, or temporary.

"The tenure is thus explained:—In some instances the same family has rented the same farm at a stipulated amount (or share of the crop) for several generations, in which case the oolcoody tenant enjoys a right by prescription to hold the same land for ever on payment of the same rent. The oolcoody tenant can never be ousted from his farm as long as he pays the rent, nor can that rent be raised by the landlord or meerassidar. The right to cultivate descends to his children; and he may even mortgage, but cannot sell, that right. The paracoody, or temporary, tenants do not enjoy these privileges: they make their stipulation for a term, after which the agreement must be voluntarily renewed by both parties, or the right to occupation ceases."*

Colonel Briggs tells us:—"In the villages where the lands are held in common, the tenants hold of all the meerassidars as a corporation; where they have been divided, they hold of individuals. In addition to their stipulated rents, payable in kind or in money, they pay the established fees to the corporation. In no case have they any concern whatever with the meerassy maunium, or rent-free land attached to meerassy tenure, or to any of the other privileges belonging to the members of that community. The meerassidar, after receiving his rent, pays to the Government its share, and whatsoever remains surplus is retained by him as his profit or rent. This profit is termed swamybhogum, signifying landlord's portion."†

This tenure must in some respects resemble the zemindaree or putteedaree tenure of the North-Western Provinces.

Of the pycaries there are said to be two kinds, the *resident*, who has some sort of continuing interest in the soil; and the *stranger*, who has no such interest, and has to be tempted from a distance by a lighter rent.‡ The following extract shows that in some places the pycary bears a strong resemblance to the hereditary cultivator of Bengal:—

"There are, however, many instances where Pycaries bear exact analogy to the copyholders of England. The latter, it has been shown, derived their title to their estates from long residence and occupancy of them, and thence were enabled to prescribe against the lords of whom they held

Blackstone, Vol. 2.

* Minute by Board of Revenue, Fort St. George, 5th January, 1818.

† Briggs's Land Tax, p. 249.

‡ *Fifth Report*, p. 105.

them, even before the statute of Charles II., which gave them a property in land, although originally mere tenants: they could not before this be compelled to relinquish their land at the lord's will if they continued to perform the services, that is, to pay him the rent, into which all services were for the most part resolved. Yet their subjection to the lord is, even to this day, so clearly preserved, that a copyhold does not pass from one man to another by the common rules of alienation, as in other estates, but must be first surrendered back to the lord of the fee, on which it is dependent. So the description of pycarics here mentioned enjoy the right of cultivating the soil by prescription, themselves and their ancestors having done so for many generations. They cannot be forced away from the village at the will of the meerassidars, who must assign ground for them. But they cannot sell, mortgage, or transfer, for a valuable consideration, their right; for it consists in the use only, and not in the substance, of the soil. Their heirs succeed; but, in default of them, the lands revert to the meerassidars. This, however, is to be considered the law as it originally stood with regard to such property; for, on account of the reduced state of population, these pycaries, I believe, are allowed to call in others and to appoint successors. Still the right is never a subject of bargain and sale. They receive a share of 45, instead of 50, per cent.; because, although they have no more than a contingent interest, yet it is improved at least into a life estate. But they do not in any shape participate in the fees and privileges of the meerassidars, to whom, on the contrary, they pay fees."*

Mr. Thackeray, who was deputed to report on the suitability of the zemindaree system for Madras, thus sums up the tenure prevailing throughout the Presidency:—

"All this peninsula, it may be said, except, perhaps, only Canara, Malabar, and a few other provinces, has exhibited, from time immemorial, but one system of land revenue. The land has been considered the property of the Sircar (Government) and the ryots; the interest in the soil has been divided between these two, but the ryots have possessed little more interest than that of being hereditary tenants. If any persons have a claim to participate with Government in the property in the soil, it is the ryots, the men who originally reclaimed and cultivated the lands. The country is divided into villages: a village, geographically, is a tract of country comprising some thousand acres of waste and arable lands. Considered politically, it is a little republic, or rather corporation, having its municipal officers and corporate artificers: its boundaries are hardly ever altered; there it stands for centuries, and though occasionally injured, or even desolated, by war or

* *Fifth Report*, p. 715.

famine, the same name, boundaries, interests, and, perhaps, even families, remain the hereditary tenants of the land for centuries."*

Mysore.

In Mysore, besides lands held on a privileged title, which are generally saleable, there are the *Candayan* and the *Buttai* tenures, both

* *Fifth Report*, p. 992.—Mr. Thackeray thus indignantly rejects the proposal for a zemindaree settlement, and lauds the custom of *la petite culture* by ryot proprietors :—

"*Objection* 3. *The remission goes to the wrong person; it should go to the ryot.* The zemindar is not the cultivator ; he does not even superintend cultivation if the ryot be independent of him ; and it is more likely that the remission will be applied to marriages and idle expenses than if given to the ryots. The husbandman in India is the most industrious parsimonious creature in the world; a stranger to vice, thinking of nothing but cultivating his field, maintaining his family, and paying the Sircar rent. Why, then, shall the remission, the mainspring of future industry and improvement, be made to a stranger, perhaps a ferocious polygar, an avaricious, speculating Soucar, or an intriguing Dubash, merely to enable him to grow fat and pay the revenue in case a bad year should come ? Would it not be better to make the remission to the ryot ? It would equally tend to the security of the revenue, or, perhaps, more so; because it would be more likely to be directly applied to the extension and improvement of cultivation. In case of unforeseen misfortunes, the relations of the ryot would assist him ; he could mortgage his land, and go on paying his revenue. The ryot is the man who feels, as it were, married to his field. What an effect the sense of a property in the soil would have upon him ! As it is, under oppression, he still sticks to his field as long as he can. The people in Canara feel this ; and every man builds his house in his own field. It is said a remission to the ryot is applied immediately to the land and farming stock of the country ; a remission to the zemindar is applied indirectly, through many channels of Soucars, securities, renters, &c. Besides, we talk a great deal of the happiness of the people : how can we increase the happiness of the bulk of the people so much as by making their possessive proprietary right and giving them all the advantages of property and permanency ? It may be said that the rights of the inferior ryots will be secured at any rate; but, if it is admitted that a remission is necessary to convert the lands they cultivate into saleable property, it must follow that we withhold the property from them until we give up the remission to them. Indeed, it seems to me contrary to the benevolent intentions of the Court of Directors to give all the advantages of the new system to a set of men to be created on purpose to enjoy them ; and to place in thraldom those industrious people who constitute the bulk of the people, and by whose labors our armies are in reality paid, our investments provided, and our whole Government supported."—*Ibid.*, p. 914.

assessed at full rates, the former in money, the latter in kind; the proportion taken being one-half theoretically, though supposed to be less in practice.

"There is an hereditary right of cultivation attached to both Candayan and Buttai lands, and this is not interfered with so long as the Government dues are punctually paid or the land is not left barren: but, in either of these cases, Government exercises the right of proprietor of the soil."*

An hereditary right of property possessed even by predial slaves.

The following extract is instructive, as proving that an hereditary tenure may consist with a degree of subjection to the landlord amounting even to agrestic slavery:—

"It has been stated by very competent authority that in the Tamil country, the *Parryers* and *Pullers*, most of whom are slaves attached to the lands of the vellalers,† as well as the pullis, who are generally serfs on the lands of Brahmins, sometimes claim hereditary private landed property as the incident of their villanage, and that it is generally allowed to them and their descendants on proving their former residence in the village, however long they may have been absent from it."‡

General conclusions as to Southern India.

From a review of these authorities, it may be assumed as the general characteristic of the Madras tenure that it constitutes a proprietary, or at least an heritable, title in the head ryot over his own holding; while the sub-tenants and inferior classes of ryots are sometimes tenants-at-will, and sometimes have rights of occupancy of greater or less strength.

Wherever a superior intervenes—as, for example, the village headman, *potail*, *pudhan*, *&c.*—or has been created or recognized by Government—as the *zemindar*, *polygar*, *&c.*—he holds merely an official position as collector and manager, and possesses, independently of his own proper holding, no proprietary interest in the soil.§

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* See Report on Mysore for 1864-65, p. 6.

† Hindoo landed proprietor.

‡ *Briggs's Land Tax*, pp. 54 and 55.

§ *Report on Mysore for* 1864-65, pp. 84,138, &c.

It is not unnatural to conclude that this state of things approaches nearest to the primitive condition upon which the land was held throughout Southern and Central India before successive invasions from the north changed the face of society.

"It is in the southern provinces of the peninsula" (thus write the authors of the Fifth Report), "which are situated below the Ghâts, and which from their local position with relation to that formidable barrier and the greater heat of the climate were last invaded by the northern conquerors, and in which, therefore, primitive institutions and rights have undergone less change, that the tenures which have been described were found to exist in a less impaired state."*

If any general principle can safely be drawn from these facts, it may be thus stated: that, in the absence of a superior claiming a proprietary right, the ryot or cultivator is invested with an interest in the soil approaching more or less to that of a proprietor. The lowest form of the tenure is a right of simple occupancy.

Thus also the Fifth Report:—

"In those lands where there are no meerassidars to claim, the ryots may be considered as *cool paracoodies*, holding of the Sircar; enjoying, as they do, an hereditary right of occupancy, subject to the condition of paying the rents demanded of them.

"This right it has never been the practice either of the Hindoo or of the Mussulman governments to take from the poorest cultivator, so long as he remained in obedience to the general authority of the Sircar and duly yielded the public share. Indeed, it is not to be discovered in the history of the Hindoos, from the reign of their first princes until the final downfall of the Hindoo authority, that any of the landed rights to which your Committee have thus briefly adverted were ever impeached or destroyed: on the contrary, their uninterrupted existence is proved by numberless records, and by none more distinctly than by the ordinary form of a deed of sale."†

Tenures in Bombay.

BOMBAY.—Throughout Bombay the tenure of land resembles that in Madras. We find villages with their municipal constitution complete, and their potails or representative head. The entire cultivated area is

* *Report on Mysore* for 1864-65, p. 137. † *Fifth Report*, p. 138.

owned by the ryots, each man's holding (as in the bhyachara tenure in the North-Western Provinces) being his share.* In Ahmedabad "the ryot holds his land on a general understanding that he is not to be superseded as long as he pays his rent, which, though not fixed, is regulated by the custom of the village."† In Kaira the cultivator receives the perpetual lease of a portion of the best land, called his *vaita*, which is highly assessed, and of inferior fields, which are lightly assessed: if his means improve, he is compelled to increase his *vaita*, and allowed to diminish it if they fall off: if he relinquishes it altogether, he loses his right to cultivate.‡ The potail was originally held responsible for the revenue; but latterly he seems to have been relieved of that duty, and his importance diminished, by the collection being entrusted to the tallatty or putwar.§

Candeish.

In Candeish "the lands of the village are considered the joint property of the township:" the fallow land, the common pasturage; the remainder, "either the property of individuals or cultivated by tenants who receive a portion of the crops."‖ Ordinary cultivators pay "what is termed the full Government assessment, being at least one-half of the produce:" privileged holdings are called *wuttuny*, and fetch a price in proportion to the lightness of the assessment.¶

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* *Briggs's Land Tax*, p. 308. The right seems to originate in simple occupation; and herein appears the distinction between this tenure and the bhyachara tenure of the North-Western Provinces, by which the right of property is vested in the brotherhood, or proprietary family, and is confined to its members and such strangers as they choose to associate with themselves.

† *Ibid.*, p. 318.

‡ Briggs, p. 319. This is called thattabundee. Elphinstone (9th April, 1821) remarks that the tenure resembles that in the southern Mahratta country, where the vaita is called *chalee*.

§ Briggs, p. 328. ‖ Bombay Revenue letter, November, 1823.

¶ Briggs, p. 339.

Speaking generally, the e are in Bombay three classes of ryots: (1) meerassidars, or landed proprietors possessed of *wuttuns*; (2), *ooprees*, or permanent tenants; (3), *warwanda kurrees*, or temporary tenants.

The first-named tenure can be traced to the remotest antiquity; it may be conferred by the heads of villages, and implies an hereditary right so long as the "assessment, according to the established usage of the village, is paid." Possession can even be recovered after desertion. The oopree tenure, bating some privileges, is almost as valuable. "There is no *meeras* in the Southern Mahratta country, nor in Beejapore; and permanent occupancy, though recognized, does not confer similar advantages."

Scinde.

In Southern Scinde, "every holder of land who contracts with the State for the payment of rent is a *zemindar*."

"He is generally the holder of a few acres, which he cultivates himself in most cases. The subdivision of land there, in fact, is quite as minute as in ordinary Deccan villages." In Northern Scinde, on the contrary, we find an approach to village proprietorship of the North-West; the zemindar "often holding whole villages with the entire and absolute power of subletting all the land." But even here an hereditary class of cultivators is recognized by the zemindars, having the right of occupancy on payment of a certain rent.†

On the whole, the condition of cultivators in Scinde so much resembles that in Bombay that the same rules of settlement are found equally applicable.

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* *Bombay Revenue letter, dated 5th November*, 1823.—The proportion of meerasdars to ooprees in Poona, the former seat of the Mahratta government, is 3 to 1; in Ahmednuggur they are equal. The proportion of temporary ryots is not stated. In Candeish the Meerasdars are few; but the hereditary ryots, whose tenure is nearly as valuable, form three-eighths of the agricultural community.

In the meeras tenure the right of pre-emption exists among the privileged community, much as it does in the putteedaree tenures of the North-Western Provinces.—*Briggs*, p. 346.

† "There is a class of hereditary cultivators called *mouroosee harees* in Northern Scinde, who have cultivated the same land for years, paying *lapa* to the zemindar in addition to the Government assessment. The zemindars admit that this class of cultivators has a right of occupancy on the conditions mentioned."—*Report by Major Francis, Superintendent of Survey, 16th March*, 1863.

Hyderabad.

The same observation applies to the assigned Berar districts. The potail is the hereditary collector of the rents. In theory there is no proprietary right but in the State; in practice the ryots possess "all the appurtenances of proprietorship; they can sell, underlet, and transfer their holdings as they please; they cannot be ejected so long as they pay the rent: and they have this advantage over proprietors, that, having sold or resigned their holdings, they can take a fresh holding elsewhere with the same privileges as before."* Simple occupation, or reclamation of the waste by a stranger, creates the same right.

Malwa.

We learn from Malcolm that in Malwa there are three classes of ryots: (1) the *junnee* or *wuttunee* kursan; (2) the sookhbasee; (3) the *pykashtee*. There is no mention of potails or village officers.

The 'junnee' ryots possess a "title to the fields their forefathers cultivated, which is never disputed while they pay the Government share:" they have the power of subletting. "In general a fixed known rent, and established and understood dues, or fees, are taken from such persons, beyond which all demands are deemed violence and injustice. When compelled by extreme oppression to move, they are generally brought back, as it is considered the greatest misfortune that can befal a country to lose its hereditary kursans." Many of these become wealthy, and employ their capital in reclaiming the waste.

The 'sookhbasees' are new settlers, who at first "have no immunities or rights, and are much at the mercy of those by whom they are employed. After two or three generations the descendant of the original sookhbassee kursan becomes one of the *wuttunee*, or native, cultivators of the village which he inhabits.

The pykasht ryots, so called because non-resident, possess no rights beyond their pottahs or agreements, which seldom extends to more than five years.†

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* Report by Mr. Yule, the Resident of Hyderabad, dated 14th December, and by the Commissioner, dated 3rd November, 1864.

† *Malcolm's Report on Malwa*, p. 418.

Nimar.

In the Province of Nimar the type of cultivating occupancy resembles that of other Mahratta districts, excepting that from exaction and oppression the tenure appears weaker.

Here the pergunnah officers* are termed "Zemindars." The potail possesses "inam" land and certain rights and functions, but the villages were ordinarily by the native government farmed to strangers. The potailship is hereditary; its privileges are not divisible nor transferable, except on failure of heirs.† "Old resident cultivators possess a right of occupancy so long as they pay their rents."‡ Some few of the ryots, as well as the potails, have *wuttuns*, but they can be transferred only in default of male issue and with consent of the ruler.§ After our occupation, the right to sell was universally admitted.‖

"The security of the ryot" (as under the native rule in Oudh) "was of a negative character: if he is not well treated, he moves off to an adjoining village under another farmer, and cultivates there until the obnoxious farmer is changed. The farmers dread a combination of their ryots; and, as they cannot meet them by a combination among themselves, the orderly and industrious ryots are safe and secure; they are too valuable to the farmer to be neglected, and they know too well their value and importance to suffer long any great oppression; it is an adjustment or equalization of interests by the operation of supply and demand and a calculation of profit and loss that keeps all together."¶

Nurbudda Territories.

In the Saugor and Nurbudda territories a very similar state of things prevailed. Under our Government proprietary right was never acknowledged in the "malgoozars" or farmers who entered into engagements with Government; and it is only in the settlement now being formed that, under instructions originally issued by the Government of the North-Western Provinces, a proprietary title is being recognized or conferred. Under the previously existing system an hereditary right

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* The Mundlooee and Canoongo.—See Reports on Nimar published by the Government, North-Western Provinces, in 1836, p. 92.

† *Ibid*, p. 87.

‡ Captain French, Political Assistant, says that the right "is hereditary, and though the custom can scarcely be said to exist, there is no impediment to the right of cultivation being sold to another with the consent of the authorities."—*Ibid.*, p. 90.

§ *Ibid.*, p. 87. ‖ *Ibid.*, p. 64.

¶ Sir Robert Hamilton's Report, January, 1847; *Ibid.*, p. 82.

grew up from length of cultivating occupancy, and this (wherever no stronger claim has been proved) is now being constituted a proprietary title.*

Rajpootana.

In Meywar the ryot is the proprietor of the soil. "He compares his right to the *doob*† (grass), which no vicissitudes can destroy. He calls the land his *bapota*,—the most emphatic phrase his language commands for patrimonial inheritance. *Bapota* is the *wuttun* and *meeras* of the peninsula. The holder, if a military vassal, is called "bhomia." The camatchi of Malabar is the bhomia of Rajastan.‡ The potail was only *primus inter pares*, possessing no proprietary right beyond his own holding and certain perquisites.§ Rent is taken generally in kind, at rates varying from one-half on the autumnal to a third or two-fifths on the spring crops."‖

Himalayan regions.

Throughout the Himalayan mountains, where indigenous custom has been little disturbed by the stranger, we find the great body of occupant cultivators holding either as proprietors or as hereditary ryots. "The land seldom changes proprietors; the greater part of the present occupants there derive their claims to the soil solely from the prescription of long estab-

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* See orders issued by the Lieutenant-Governor, Mr. J. R. Colvin, in 1853, Appendix 20 to *Settlement Directions*, p. 157. "All cultivators who have been in possession of their holdings since 1840 (a date which is adopted as it has already been named by Colonel Sleeman as that from which continuous possession would constitute an hereditary cultivator), shall be deemed to be, in the absence of other fixed and stronger claims, entitled to such full proprietary rights.

† So called from the tenacity with which it clings to the soil.

‡ *Tod's Rajastan*, Vol. I., p. 494, *et seq.*

§ He obtains *serana*, or a seer in every maund of 40 seers. The same allowance under the same name is taken by certain claimants (Rajpoots, I think) of extensive tracts about Roorkee, in the Saharunpore District.

‖ *Tod's Rajasthan*, Vol. I., p. 502.—In Marwar, Colonel Tod says, "a corn rent, the only one recognized in ancient India, and termed *bultai*, or division, is apportioned equally between the Prince and the husbandman." *Ibid.*, Vol. II., p. 172.

lished and undisturbed possession.* Each man is owner of his own holding, and the settlement is, literally speaking, ryotwarry."†

General law of tenant occupancy.

We have thus taken a comprehensive and (so far as the means at my command permit) an exhaustive view of the question throughout India, excepting the Gangetic valley and adjoining tracts; and I am now entitled to draw the conclusion that over the whole country there exists the general law of ryot right. With few exceptions, no proprietary title intervenes between the Sovereign and the cultivator. The individual occupant, as a rule, is either proprietor or permanent holder. The exactions of the State may often have reduced the title to a mere shadow; but the moment tyranny and oppression are withdrawn, the occupancy resumes its substantial character, tending to acquire more or less of a beneficial interest. Such is the tenure which in every quarter exists, or which springs up naturally in the soil.

BENGAL.—Coming now to Bengal, a careful retrospect leads to two conclusions: *first*, that tenant right existed in Bengal very much as it did in Central and Southern India: and *second*, that the zemindar of Bengal had more the features

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Mr. Traill's Report, printed in the As. Res., Vol. XVI.—*See* Reports on Kumaon, p. 31.

† *Report by Mr. J. H. Batten, Ibid.*, pp. 129-131.—Besides the proprietors, we find *khaekurs*, with right of occupancy so long as they pay the Government share of the revenue, and *sirdhans*, who hold on lease; but these latter are comparatively few.—*Ibid.*, p. 465. The property in the soil is held theoretically to vest in the Sovereign.—P. 31.

So, in Mr. Barnes's Report of the Kangra Hills:—"I fancy I can discover that primitive condition of landed tenure which at one time, perhaps, prevailed throughout Hindoostan." Then, after describing the proprietors, he adds:—"The people never considered the tenure of that absolute and perfect character that they could transfer it finally to another. The idea of sale is quite strange and even distasteful to them. The land, they argue, belongs to Government."—Paragraphs 121-128.

of an official than of a proprietary origin. These two facts, as I will show hereafter, are closely connected.

Northern Sircars.

In the Northern Circars of Madras the state of things approximates to that in Bengal. The "zemindar" is there described as a Hindoo farmer, who, for a percentage and a grant of land, undertook to be the collector over a certain tract: his interest is now confined to a percentage of the assets and disposal of the waste.*

Orissa.

In Cuttack and Orissa, we find Mr. Sterling asserting, as the result of his elaborate enquiries, exactly the same principle.

The zemindaree system, he says, arose out of our "failure to distinguish between the inheritance and sale of an office, and the inheritance and sale of the land with which that office was connected. Hence, on the introduction of the British Government and regulations, all parties whose names appeared in the public accounts of the preceding administration as answerable for, or entrusted with, the collection of the public dues, were forthwith acknowledged not only as 'zemindars,' but as proprietors of the land comprised in their zemindarees."†

The ancient system was very much what we find elsewhere; every village had its pudhan and bhoi, *i. e.*, its headman and accountant, whose

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* *See Fifth Report*, p. 115; also Mr. J. Grant's *Survey of Northern Sircars*. "The farmer received five per cent. on the net receipts, and a holding called *nankar laverum*. The officers thus employed were at first distinguished by the name of krory (*i.e.*, collectors of a krore of *dams*); afterwards they were more familiarly known as zemindars."—*Ibid.*, p. 639.

† *Sterling's Account of Orissa Proper, or Cuttack*, 1818 (?) p. 76.—This author mentions *seven* "grades of persons holding offices and tenures connected with the land who appear on the Collector's accounts as zemindars and absolute proprietors of the soil." Among these are Rajahs, Government Collectors, "Chowdree and Canoongo Talooqdars," mukuddums, accountants, headmen, &c., p. 79. The nature of some of these terms is apparent from the zemindaree grant of the 24-Pergunnahs to the East India Company, which specifies that the *Company* was to be "considered as Zemindar, Chowdree, and Talooqdar."—*Ibid.*, p. 84.

offices were both hereditary and transferable. "The thanee, or fixed cultivators, undoubtedly possessed under the old Rajahs the privilege of hereditary occupancy; their fixed assessment was light and easy; and there was then no one to dispute the matter with them except the Sovereign, who, whatever his claims in theory, of course required nothing from the land but an adequate revenue." It is doubtful whether the tenure was transferable.*

He adds:—"It appears to me a clearly established principle in Cuttack, and it is scarcely denied by any whose notions of landed property have not been altogether newly modelled by the British laws and regulations, that the superior holder, whether mukuddum or Talookdar, has no shadow of a right to dispossess the thance ryot from his land so long as he pays the rent demandable."

Bengal Proper.

That the spurious zemindar, whom in Bengal we created landlord, was mainly of the official type, is abundantly evident from the copious evidence contained in the Fifth Report. It will suffice to quote one or two passages as illustrating the growth of the tenure.

"In the latter periods of the Mahomedan dominion the system of farming the revenues by degrees came into very general use; and to this, it is believed, may be traced the origin of most of the zemindars in the Bengal Provinces and in the Norther Sircars. They were, as it is now pretty clearly ascertained, in general no other than the revenue servants of districts of sub-divisions of a province, who, as the Committee have formerly explained, were obliged by the conditions on which they held their office to

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* *Sterling's Account of Orissa Proper or Cuttack*, 1818, (?) p. 64.—"The thance ryots almost never hold on pottahs, but the pahee ryots almost universally do." *Report of Deputy Commissioner, 16th August*, 1819.—"The thance ryots are considered to possess a permanent title of occupancy so long as they continue to pay the rent demanded from them. It is further stated that the demands of the managing pudhans and bhois on the thanee ryots were usually restricted to that proportion of the demand of Government which remained due after the amount paid by the pahee ryots had been appropriated to its liquidation." *Government letter, 24th December*, 1819.

It is a curious fact that these thanees, who possess so distinct a right, pay a rent materially higher than the pahees, who possess none. The difference is said to be "4 annas in the rupee," or 25 per cent. But they appear to have some counterbalancing benefits. Thus Mr. Sterling says:—"There is the general advantage of having a home of his own where his ancestors have dwelt in all ages, of sitting under the shade of the trees which they planted, and of bestowing his labors on land which in one sense may be called his own."

account for the collections they made, or the share of the crops they received from the ryots, to the governing power in whose service they were employed; and for which service they were in the enjoyment of certain remuneratory advantages, regulated on the principle of a percentage or commission on the revenues, within the limits of their local charge; but having, in the process of time, and during periods of revolution, or of weakness in the sovereign authority, acquired an influence and ascendancy which it was difficult to keep within the confines of official duty, it was found convenient to treat with them as contractors for the revenues of their respective districts: that is, they were allowed, on stipulating to pay the State a certain sum for such advantage for a given period, to appropriate the revenues to their own use and profit; the amount of the sum for which they engaged depended on the relative strength or weakness of the parties, the ability of the Government to enforce, or of the zemindar to resist. In this situation of things the practice of sub-renting naturally ensued, and the detail of the farming system would extend itself to single villages."*

So also Mr. Shore:—"The most cursory observation shows the situation of things in this country to be singularly confused. The relation of a zemindar to Government and of a ryot to a zemindar is neither that of a proprietor nor a vassal, but a compound of both. The former performs acts of authority unconnected with proprietary rights; the latter has rights without real property; and the property of the one and the rights of the other are in a great measure held at discretion. Such was the system which we found, and which we have been under the necessity of adopting."†

The limitations, then, prescribed in the Bengal Regulations upon the authority of the zemindar were entirely in accord with the tenure actually prevailing; and the perpetuation of the same in some form or other was unavoidable, unless we had interfered at once to change the customs of the country in a direction *contrary to the indigenous tendency* which we find throughout the peninsula;—a tendency according to which the ryot's right is continually asserted, and instead of decaying, springs up, develops, and assumes a fixed and permanent character.

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* *Fifth Report*, p. 157.—So Mr. J. Grant:—"It is further advanced as incontrovertible that the zemindars or other classes of natives, hitherto considered the rightful proprietors of the lands, are actually no more than annual contracting farmers or receivers of the public rents;" &c.—*Ibid*, p. 25.

See also page 401.

† *Ibid.*, p. 479.

The strength of the resident cultivator's title in Bengal, assessed though he was at (what are sometimes termed) "full market rates," and, indeed, at rents often higher than those of the non-resident tenant-at-will,* is testified on every hand. It is unnecessary to refer here in detail to the well-known regulations by which it was provided that the resident "cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied," and the rules under which he was entitled to demand a pottah at the customary rates and protected from further exaction, since these have been so fully stated in the late judgment of the High Court.

Behar.

As our rule advanced up the valley of the Ganges, new features came to light. The Collectors began to meet with traces of real zemindarship. It is curious to observe the perplexity of our officers in Behar, when called to guide the administration of estates cast in the type of village proprietorship, and sometimes subordinate to superior talooqdars. But there is nothing to induce the belief that the position of the ryots of Behar differed essentially from their position in Bengal.†

Benares.

In the Province of Benares "village proprietorship," both in the talooqdaree and the puttoodaree forms, was found by us in full force, and

* "Neither is the privilege, which the ryots in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindars can receive no more than the established rent, which in most places is *fully equal to what the cultivators can afford to pay.*" Lord Cornwallis in 1790.—*Ibid.*, p. 487. So Mr. Shore says of the hereditary tenants, that though they have "a stronger right than others," yet "they generally pay the highest rents."—*Ibid.*, p. 192.

† Indeed, if we are to believe Mr. Shore, their position was more fixed:—"In Behar the variations in the demands upon the ryots are not so great as in Bengal; the system of dividing the produce affords a clear and definite rule wherever that prevails."—*Ibid.*, p. 465.

(although the authors of the Fifth Report have not correctly

Mr. Shore was puzzled by the (now familiar) *malikana*, or land given in lieu of proprietorship, held by proprietors temporarily out of possession. He confounds it with the *perquisites* of the official zemindar:—"In Bengal no such custom has ever been formally established, although there is some affinity between this and the allowance of *moshaira*,"—a term which signifies *salary*.—*Ibid.*, p. 451. "I have in vain endeavored, he says, "to trace its origin:" p. 452. We find him unconsciously describing the regular putteedaree and talooqdaree tenures of the North-West, but with such a confusion of names, that in those days zemindar signified talooqdar, and talooqdar a putteedar.

In 1789 we find the Collector of Shahabad sadly embarrassed by "the number and variety of claims" arising out of a "zemindaree" of 874 villages. The Baboo talooqdars objected to any one being recognized as proprietor (malik) but themselves; while the "smaller zemindars" urged that, "solely for the sake of security to themselves, they had placed their respective villages under the protection of such talooqdars who, from superior influence, were able to screen them from the vexatious interference of the overbearing agents of the *hakim*;" they now demanded separation from the talooqdars and "claimed the privileges of giving in their kyboolueuts." The following remarks are curious with reference to similar questions in Oudh:—

"Many of the old proprietors who have disposed of their villages at different times in order to pay their balance of revenue urge with great earnestness that such sales were occasioned by the oppressive extortion of amils, and that at a time when the property of land was rather considered a misfortune than an advantage; they therefore request that their old accounts may be examined, and that they are most willing to pay such balances as may appear just. They further urge that the present prospect of ease and profit to all proprietors of land from the proposed ten years' settlement, as well as from the probability of a fixed mokurrury assessment, will tend considerably to raise its value, and that their property was sold to satisfy the demands of amils at every disadvantage, even supposing the demands just, because at that time lands scarcely bore any value.

"Some cases have occurred where the real proprietors of the soil have sold their lands 12 or 15 years ago, but have, nevertheless, continued in charge of such lands, for the following reasons:—The purchaser, although willing to afford an equitable jumma, has not unfrequently been frustrated in this respect by the exaction of the amil, and by the eagerness of the old malik to submit to any extortion, rather than quit the lands he has been obliged to sell. By these means the purchaser has for long intervals remained out of possession. At this particular time, when,

apprehended the tenure*) full provision was made for maintaining existing proprietary rights, and for restoring to possession original proprietors ousted within the preceding 20 years, *i. e.*, subsequently to 1775.‡ In other respects "the same system of interior administration as had been established in Bengal" was, with the concurrence of the Rajah, made applicable to Benares. As a part of the system, protection was afforded to the ryot, from whom the proprietor is declared entitled to levy only "the *hakimee* Government proportion of the produce."§ All recent *abwabs* were abolished,‖ and pottahs were to be granted not exceeding "the established rates of the pergunnah for lands of the same quality and description,—due consideration being had, as far as may be required by the customs of the districts, to the alteration of the species of culture, and the caste of the cultivator."¶ This rule was made equally applicable to resident and non-resident ryots; but, in respect of the latter, the following condition is added:—"provided the proprietor or farmer choos to permit them to continue to cultivate the land, which they have the option to do or not as they may think proper: whereas khoodkasht ryots cannot be dispossessed as long as they continue to pay the stipulated rent."

Whether these rules were an innovation, or whether they really were in accord with the rights of ryots then existing,

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all are struggling to establish a claim to land, the old proprietors object the purchasers not having had possession as a reason why the bills of sale in his favor should not be adhered to."—*Fifth Report*, pp. 494 and 495.

I conclude that such claimants fell into the ranks of privileged ryots.

* The Select Committee thought they saw in "the village zemindar of Benares" the hereditary Collector or "potail of the Carnatic, who represented the Government and could dispose of *his situation*" by sale.—*Ibid.*, p. 47.

† Regulation II., 1795. ‡ Regulation I., 1795.

§ Regulation LI., 1795. Preamble.

‖ Regulation II., 1793, Section 3. ¶ Regulation LI., 1799, Section 10.

I will consider after discussing the position of tenants in the rest of the North-Western Provinces, which, equally with Benares, overlap the Province of Oudh on all sides excepting the north.

NORTH-WESTERN PROVINCES.—I find no records to throw light on the condition in which we found the cultivating classes on our assumption of the North-Western Provinces besides the early regulations, which (as themselves exercising an important influence on their position and rights) will be noticed afterwards.

The question was for many years warmly discussed whether the promise of a permanent settlement early given to the landholders of these provinces should not, as well on grounds of public faith as of public expediency, be redeemed; but the proposal in favor of the measure, though supported by most of the local authorities, was at home coldly received. In the course of this discussion, an enquiry was prosecuted in 1818 into the relative rights of landlord and ryot, the results of which are recorded in the Proceedings of Government in 1820, with the able and exhaustive paper of Mr. Holt Mackenzie which formed the basis of Regulation VII., 1822.* I will give in detail the conclusions then arrived at.

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* These most valuable documents, to which I never before had access, were procured from the *Bengal* Office; they would have proved of eminent service to the officers engaged in forming the settlement of the land revenue under Regulation IX., 1833, and even now would be most useful to those employed in revising that settlement. I would suggest that the chief papers of the series, especially Mr. Mackenzie's minute, should be published.

Most of the points that have recently engaged attention in reference to the expediency of permanent settlement of the land revenue are ably argued in these papers; and it is much to be regretted that they were not generally available during the late discussion of the subject.

A series of questions were asked of the Collectors on the customs which egulated the payment of rent, whether in money or kind. The two questions bearing most directly on our present subject are quoted in the margin; the second supposes that ejection of a cultivator would only take place, if at all, on the occupant declining to pay the same rent as that offered *bonâ fide* by another. The question is not one of simple power to evict without reason assigned; and this must be borne in mind in estimating the replies.

1*st*.—Whether such proportion (of the crop) is fixed by custom, by agreement, or by the direction of the landholder.

2*nd*.—Whether a landholder can legally dispossess a resident or khoodkasht ryot, who has regularly paid the customary rent for his lands, *to make way for another person who may be willing to pay more*.

In reference to the first question, it was answered, that for the khurreef and inferior crops rents in kind generally prevailed.

"In tenures of this description," write the Board of Commissioners, "the proportion of the crop, whether taken by the landholders in kind or commuted for its value in money, is regulated by custom, which varies according to the nature of the soil from one-fourth and less in lands newly reclaimed to one-half in lands under full cultivation; and the commutation for money is similarly governed by fixed custom, conformably to which the tenant purchases the landholder's share at a certain rate above the market-price after the produce of the field has been estimated by a regular appraisement on survey.

"Nothing would appear to be left in these village adjustments to the discretion of the landholder. The survey is superintended by the 'kunya,' or appraiser, who from long practice has acquired such an accuracy of judgment as to seldom err to the extent of half a maund in his estimate of the produce of ten beegahs or more; and who, being wholly independent of the landholder, can have no inducement to forfeit this character of accuracy and impartiality: and the price is regulated by the bunneeah, or corn-merchant, who, being the general surety of the tenants and their banker in the requisite advances to them for the payment of their instalments, has a common interest with them in preventing impositions.

"With regard to the nukdee tenures, or money rents, they are found to be regulated in only few parts of these provinces by established pergunnah rates. In general, they appear to be annually adjusted by mutual agreement. The tenants themselves are stated to be averse to binding themselves to a fixed payment beyond the current year, in conse-

quence of the uncertainty of the seasons; and the landholders can scarcely feel a disposition to grant long leases if the tenants wished for them, while their own settlement with Government continues temporary.

"The nature of the landed property in these provinces may be considered a solid security for the tenants against any imposition or breach of faith on the part of the landholders. The majority of estates are single villages, from which a tenant who should have cause to complain readily removes himself to the next village; and such is, accordingly, the invariable result of any rapacity on the part of a farmer, whose attempt to enhance his profits always ends in his own ruin; and although in pykasht tenures the landholder is stated to be bound by no fixed rules, but to make the best terms he can, these terms will, of course, be governed by the mutual interest of the parties, and not by his own discretion, while the pykasht tenants hold the lands only from year to year.

"The reports now submitted would show that the landholders conceive themselves to possess the power of ousting resident tenants, although the practical exercise of such power does not appear to be frequent; and we believe that in estates consisting of single villages more instances would be found of tenants deserting from the inducement of lands on cheaper terms in another place than of tenants dispossessed to make way for persons offering a higher rent. The legality of this power would be a question for the Courts to decide, unless Government should think proper to determine it by a legislative enactment."

I proceed with an abstract of the replies of the several Collectors, beginning from the North-West.

Saharunpore.

Here not only did a right of occupancy prevail, but the rent could not be raised above the customary rates, which on non-proprietary cultivators were adjusted "according to the different kinds of produce.

"Should an increase be demanded of the zemindar when a settlement of his land is made, he, of course, will raise the rent on the ryot, and of consequence can dispossess him on his terms being refused; but in such case only."

In another report, after stating the variation in the rates owing to differences of soil and caste, a different Collector states:—

"So far village rates are established according to ancient usage, and not changeable at the will and pleasure of the zemindar.

"Bad faith is seldom practised by the zemindar or proprietor farming his own estate towards his ryot or cultivator; for an infringement on the established rates of his village for the various descriptions of soil comprising it would be considered by the ryot equally a breach of faith as (would

be) a disregard of engagements for lands held under pottah. Farmers are, however, stated to be in the habit of deteriorating their farms towards the close of their lease by bad faith and other acts of oppression to their ryots. In those villages where the population is not adequate to the culture of the whole land, and those which are entirely waste or uninhabited, the zemindar is less bound by any known rules or principles.

"In villages of this character, where no regular or known rates exist for the various descriptions of soil and produce, the landholder leases his lands annually under pottah, on the best terms he is able to procure from the cultivator."

And, again, repeating his opinion that a proprietor could not legally dispossess a cultivator paying at the customary rates, he adds:—"Indeed, where established rates exist, they are so far considered binding upon the good faith of the landholder that pottahs are seldom or ever required or granted."

Moradabad. Opinion is stated to be in favor of the power to oust; but in practice it was never exercised.

"The portion of the crop taken by the zemindar on all species of produce is, I believe, the same in the same situations, and is fixed by custom and agreement."

In respect of cesses taken for village expenses, police, &c., the Collector writes:—"I believe in general there is a very small portion, if any, embezzled by the zemindars. The ryots of a village are well acquainted with the mode in which those collections are disposed of, and will at all times resist imposition.

"The only nukdee* tenures in this district I am acquainted with are those on zubtee† produce, the rates of which are always settled by the pergunnah custom or mutual agreement, and not by the discretion of the zemindar.

"I consider the only real description of the khoodkasht ryot to be of the family of the zemindar, and he cannot be dispossessed, for he will never suffer himself to be so without bloodshed; every other ryot, it appears to be the general opinion, can be ousted without any infringement of justice *should be refuse* to *pay the rent demandable from him.*

"This is a circumstance, however, which is not likely to happen in this district for many years to come; the quantity of uncultivated land is so great that the ryots can always obtain abundance in every situation and in almost every village, and they in general feel much less reluctance in changing their abode than the zemindar does in parting with them."

Bareilly. On the expiration of lease, the landlord was generally considered free to let the land to whom he pleased; but ordinarily it was let to the same tenant.

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* Money. † Rates on the kind of crop grown.

"Where rents are governed by any known established pergunnah rates, although pottahs are not granted, the rights of the tenant are equally respected, as it is the interest of the landholder not to molest the tenants in their possession so long as they fulfill their engagements." Oppression and exaction were, however, frequent on the part of farmers, who, possessing only a temporary interest in the land, were not in an equal degree with proprietors concerned for the comfort and welfare of their tenants.

Shahjehanpore. If a higher rent be offered than a resident ryot is willing to pay, he may be ousted.

Where pottahs are not given, "the tenants are satisfied, so long as the landholder does not exact more from them than what has been the established usage of the village. In cases of over-exaction, the tenant has recourse to a civil action against the landholder, who, by Regulation V. of 1812, is obliged to refund whatever sum may have been taken in excess of the established usage of the pergunnah."

Rents are settled "by custom and by agreement; the discretion of the zemindar can have little to do with it, as it requires much more persuasion on his part to induce (ryots) to cultivate than on their part to be allowed to do so."

Muthra.

A question as to the mode of adjusting rent in the absence of a fixed rate "supposes a circumstance that the Collector had never known to exist," excepting in Government estates. In settling estates under his own direct management, the Collector was obliged to reduce the recorded pergunnah rates [maximum rates heavier than those in actual use] in order to equalize the rents with those of surrounding villages.

By the "ancient usage of the country, it appears the zemindar has the undoubted right of dispossessing any ryot at the expiration of his lease *in the event of his refusing to pay what may be from local circumstances the real and just value of his land.*"

The Collectors's reply is equivocal. The proprietor "cannot dispossess any person having a right by inheritance in the soil, though he may not be one of their body in the engagements with Government at that time.* But with regard to those that have no other claim to the land than as mere tenants, although they may pay their rent ever so regularly, the proprietor can dispossess them in favor of other persons who may be willing to pay more."

Agra.

Where there are fixed rates and mutual confidence prevails, no engagements were interchanged between the zemindar and ryot.

Shekoabad (now Mynpooric.)

* I conclude he means unrecorded or *shikmee proprietors.*

As regards money rents, "in some cases the rates are fixed by custom, in others by agreement; it is seldom or ever left to the discretion of the zemindar.

"A zemindar appears to have the power to dispossess a resident or khoodkasht ryot who has regularly paid the customary rent for his lands, to make way for another person who may be willing to pay more; indeed, at a new settlement, when he himself has agreed to an increase on his former jumma, he is compelled to enhance the rents of his under-tenants; and if they will not agree to the terms, they, of course, make room for others who will. This proceeding ought, perhaps, to be confined chiefly to the first year of a new lease."*

Furruckabad. "Zemindars consider themselves at liberty to dispossess any khoodkasht ryot who may fail in the punctual payment of his rent, or when higher offers may be made."

Etawah. A resident ryot might be ejected "if another person could be found willing to give a higher rent;" but a tenant so ejected had the option of continuing his residence.

Landlords whose estates had become fully cultivated and leased at adequate rents were in the habit of granting pottahs to their ryots for the whole term of their own lease.†

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* The Collector mentions a case in which a good ryot had been lost from an increased demand in the fourth year of a lease, but seems to ascribe the enhancement to a corresponding increase of the Government assessment:—"Where a progressive or increasing jumma prevails, I conclude the zemindar has recourse to the same mode of assessment."

Here, as elsewhere, while the zemindars adhered to prescriptive and moderate rates, *farmers* without permanent interest in the land are accused of injuring their farms, by rack-renting them towards the close of the lease.

† "Where such management has been introduced, the condition of the ryot may be supposed to be far superior to what is experienced by the cultivator, who is exposed to a continual mutation of terms, either by the bad faith of a zemindar, or the rapaciousness of a farmer."

In endeavoring to settle an estate in which the Rajpoot landlords had been sold out, the Collector thus describes the difficulties experienced from the timidity and dependence of the lower cultivating castes:—"The wretched dependence in which they had been kept by the Rajpoots had produced a timidity of disposition that made them afraid to accept the offer of emancipation; and I imagine a considerable period of time must elapse before they will be found sufficiently emboldened to assert their claim to a more equitable participation in the profit of the land."

Bundelkhund. — The cultivators are stated to be all proprietors, and (apparently even if sold out) to have a right of occupancy at customary rates.

Cawnpore. — The ryot is described as a tenant at will cultivating from year to year. The risk of bad seasons would prevent him from desiring a long lease. The Collector adds:—

"The link, however, which binds the landlord and tenant is so closely connected, that if the former injure the latter by exacting so great a rent for his land as shall not leave the tenant a fair profit for his risk and labor, the injury recoils upon himself, and the opinion of the country, which has so much influence upon conduct in all the transactions of life, will depopulate his estate and bring him to ruin.

"Money tenures being for the most part prevalent in this district, the rents are governed by the mutual agreement of the parties, founded upon known and established pergunnah rates with respect to all denominations of lands and I believe few landlords will be found hardy enough during a pending lease to dispossess a resident ryot who regularly pays the customary rent for his land. The landlord, however, at the expiration of the lease, is, I conceive, competent to oust the tenant to make way for another who is willing to pay more: but I am of opinion this is a case of rare occurrence, seeing that the interest of the tenant, although not guarded by any positive law, is guarded by a very powerful principle, namely, the plain and evident interest of the landlord. No part of this interest, therefore, can be infringed without an evident loss to the landlord.

"It appears to be an established principle between the landlord and tenant of the present day, which has probably its origin in the exactions of former Governments, that the rents of land shall amount to half the estimated produce on an average of years, leaving the other for the support of the husbandman."

Goruckpore and Allahabad. — The question whether a ryot can be ousted if he refuse to pay a higher rent equal, to what is offered by another, is answered in the affirmative; "but" (adds the Collector of Allahabad) "such a practice is not likely to occur until the high state of cultivation of the country produces a competition for lands.

"The rules laid down in Regulation V., 1812, were obviously intended to guard the ryots from oppression; they have, however, given them a

* It is not quite clear whether the lease here alluded to is the landlord's own lease, or the cultivator's pottah. In the former case, the custom would resemble that described in Mynpoorie.

latitude which enables them to turn that regulation into a source of vexatious annoyance to the landlord."

To resume,—the tenure prevailing 50 years ago in the North-Western Provinces, seems to have corresponded very closely with the custom described as now prevailing in parts of Oudh; and the unexpected coincidence in tracts so similarly circumstanced that *à priori* we should expect their tenures to correspond, is calculated to inspire confidence in our conclusions. In some districts of the North-Western Provinces the tenant is said to have been at the will of the landlord, though he always held at customary rates, and in practice was never ousted. More generally his position is thus defined: that he could be ousted, but only *if he declined to pay rent equal to what was offered bonâ fide by another*. In one district the right of occupancy is asserted absolutely. In another, it is held that by custom the ryot might be ousted if he refused to pay rent "according to the just value of the land;" that is, the rent which the usage of the locality had established as just.

The state of things throughout the provinces was practically in accord with the custom described in the last sentence of the preceding paragraph. There was, *in its practical application*, no difference between that custom and the simply preferential right to hold on at the highest offer; for, in point of fact, as the reports abundantly prove, competition was then unknown throughout the North-Western Provinces, just as it is now in Oudh: no cultivator would have thought of offering more than the rate at which by custom rent had adjusted itself; no one, at any rate, excepting "an enemy or a fool." The *bonâ fide* offer, then, of a higher rent, was nothing more nor less than an index that the existing rent was *below* the customary rent; and that by the custom it ought to be raised. Thus, as Mr. Holt Mackenzie has observed, "in point of fact, the question has never come fairly to issue between the zemindar and the ryot."*

* Mr. Mackenzie's remarks on the ryot question are so excellent that I have placed an extract from them as a supplement to this Appendix. See

However this may be, it is very evident that the tenure of the ryot at the beginning of the century was in these provinces more feeble than in Bengal. Probably, in remote times the indigenous ryot here may have possessed privileges as strong as throughout the rest of India. But a new element supervened, that of *village proprietorship*, *i. e.*, a superior right of property, subordinating to itself all inferior claims. Whether it was from the more martial and overbearing character of the conquerors, or from some other cause, certainly the zemindar of the North-West was not a mere middleman or official receiver of rent, but a real proprietor. The zemindar of Bengal was nothing more than a manager; or, if he did lay claim to the ownership (in so far as it was relinquished by the State), the title was shared between him and the ryot. It is far otherwise in the North-Western Provinces and in Oudh. No one can rise from a perusal of the evidence without the conviction that equally in both the village landlord, whether "talooqdar" or "zemindar," is *owner of the soil*. The idea permeates society and is inwrought into its daily language.

I ventured before to draw the conclusion that in India, in the absence of a superior landlord, the ryot is found to have a strong title either as an hereditary or proprietary occupant;† and I am now justified in drawing the converse inference, namely, that in the degree in which the village landlord's

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first supplement. I should observe that he did not regard the investigation as sufficiently clos and complete for a definitive conclusion unfavorable to the ryot. See paragraph 438.

* Appendix II., *passim*. As Mr. Holt Mackenzie expresses it, the cultivating ryot "seems distinctly to have been viewed as the cultivator *of the lands of another*. He appears nowhere to have claimed more than the right of occupying the fields he cultivated, and so long as he continued to cultivate them." Paragraph 399.

† *Supra*, pp. 38 & 45.

title is strong, that of the ryot is weak. In brief, ryot right is in the inverse ratio of village proprietorship.*

It is asked, naturally enough, if ryots in the North-Western Provinces possessed at the first no stronger title than a preferential right at the highest offer, or even at the customary rent, how is it that a right so much stronger was recognized at the settlement of those provinces made under Regulation IX., 1833? The answer to my apprehension is simple: it was mainly the effect of the laws and policy brought into action during the first 30 or 40 years of our administration. It must not be forgotten that hereditary occupancy at customary rates existed *as a matter of fact* among the cultivating classes, however much the absolute right of occupancy might be denied in theory. What was wanting in theory was supplied by the regulations and the Courts. The North-Western Provinces were administered from Bengal, and the principles of the Bengal system were thus naturally made applicable to the North-West.† A title resembling that of the "khoodkasht," or resident ryot of Bengal, thus grew up under the administrative action of the Government. Rights which, whenever disputed, the Government recognized and maintained, were acquiesced in and acknowledged by the landlords themselves; and so it came to pass, that, although no regulation (prior to Act X. 1859) definitively laid down the right of occupancy in the North-Western Provinces, still, when the *status* of the cultivator was enquired into and recorded at the settlement made between 1834 and 1842, the mouroosee, or hereditary,

* I use the term to signify single or joint proprietorship in an estate, as defined above, page 31.

† "The Board of Revenue at the Presidency, separated by many hundred miles from the nearest of the provinces in question, and naturally imbued with notions from the system that surrounded them, it can excite no surprise that they should not have fully mastered the very different system which they were suddenly called upon to conduct."—H. Mackenzie's Note, paragraph 460.

tenure in the older classes of ryots was very generally recognized and recorded.

I subjoin in a note an outline of the law and practice which led to this result.*

* By the 10th and 11th Sections of the proclamation issued on 14th July, 1802, landholders were prohibited from collecting any ut "authorized abwabs" and were required to grant pottahs to their ryots on those terms. Regulation XXV., 1803, Section 29; also, Regulation XXVII., 1803, Section 53, Clauses 11 and 12; and XXX., 1803, Section 8. In Section 9 of the last-named law, whenever a dispute arose regarding the rates of pottahs, it was to be determined "according to the rates established in the pergunnah, according to the legal and established rights of the parties defined upon general or local usage;" &c. Thus, also, Section 5, Regulation XLVII., 1803, provides that on the sale of lands "all ryots" are entitled to demand pottahs on the above principles.

So, generally, the Bengal summary suit law was introduced into these provinces, by which any ryot could contest the exactions of his landlord; and while the latter was armed with power of distraint &c., over defaulting tenants, he was warned that he would be held responsible for infringing the rights of tenants, whether those rested on pottahs "or on long prescription and established local usage." Regulation XXVI., 1803, Section 32, Clause 7. Regulation V., 1812 Sections 5 to 12, lay down further rules for the determination of rent in the absence of pergunnah rates, and require previous notice of intended enhancement. The Collectors of Shahjehanpore and Allahabad inform us that the ryots were not slow to avail themselves of the privileges conferred by this regulation. (See above, pp. 56 and 58.)

The various sale laws carefully reserve the rights of "*khoodkasht* and *qudeemee*, or resident and hereditary ryots;" and, in case of sequestration, the rights of the "common ryots" were to be observed according to the established rules and usages of the village or talooqa.

Above all, Regulation VIII., 1819, Section 18, prescribed that on an arrear of rent being established on suit, *the Court might authorize* the zemindar to oust the defaulter. The Court of Sudder Dewanny ruled by a circular that this implied a remedy in favor of the ryot. "Such remedy should be afforded by the Judge on the summary application of the ejected ryot, by an order for his being restored to possession," &c. Hence arose the rule referred to by Mr. Wingfield, that (excepting through the agency provided for above) a ryot could "only be ousted by due course of law, *i. e.*, by the issue of a regular suit."—C. O., Allahabad Board, No. II. of 1840, paragraph 18. This continued the law till modified by the Board's C. O. of 26th September, 1856.

Hereditary tenure in the North-Western Provinces not created by the settlement under Regulation IX., 1833.

It has been asserted by some that the hereditary tenure was *created* in the North-Western Provinces by the settlements made under Robert Merttins Bird. The imputation is unsupported by evidence. It was the object of that able administrator* to make his Settlement Officers record rights and tenures *as they found them*. His clear and exhaustive instructions will be searched in vain for any other order than to register *facts*. "Ryots having an admitted right of possession" were to be so recorded "*if any such exist*." No definitions, no leading suggestions, tending to prejudge the question, will anywhere be met with.

Equally groundless is the assertion that the right was created by Mr. Holt Mackenzie's Settlement Law, Regulation VII., 1822. From the extract of his minute attached to this paper, it will be seen that Mr. Mackenzie was fair and impartial in his views; and that, while he desired to secure the rights of the ryots, he was equally of opinion that,

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* Mr. Bird's instructions were compiled by Sir H. M. Elliot into the well-known Settlement C. O. No. 1, published in 1838; see paragraphs 167, 170—172, and 183. "*If there be* any cultivators possessing an admitted right to cultivate at a fixed rate, or at a rate regulated by a fixed principle," they were to be so recorded; "*if* any such exist;" "*if there be* any such in the mouzah;" &c. In case of dispute as to amount of rent or nature of tenure, it was to be judicially decided under Regulation IX., 1833.

It has been common to cite Mr. Thomason's opinions as those which governed the settlements in the North-Western Provinces; the fact being that Mr. Thomason did not come to power till after the settlements had been completed. The settlements were finished, or very nearly so, by 1842. His *Directions to Settlement Officers* were not published till 1849. His *Settlement Report of Azimghur*, which is sometimes quoted as containing authoritative statements, was printed in the Asiatic Society's Journal in 1838; but it never was authoritatively published; and it was so little in circulation, that when it was desired, after Mr. Thomason's death, to publish it in the *Agra Selections*, there was some difficulty in procuring a copy.

if anywhere "the custom of the country has not vested those persons with any positive rights of occupancy, Government would not, be presumed, be disposed to create such rights."* I do not, indeed, doubt that Regulation VII., 1822, and the formation of the settlement record, tended in a material degree to fix and strengthen the ryot's right, already developed under the fostering hand of our administration: it also had a tendency to stereotype the rates of rent. But I see no ground whatever for the allegation that Regulation VII., 1822, or the settlement made in accordance with its provisions, *created* the ryot's right.†

That no foregone conclusion nor any instructions in favor of the ryot were inculcated by those who had the direction of the Settlement, is further proved by the variety of opinions

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* Paragraph 440.

† Section 9 prescribes that a record shall be prepared of every incident affecting the internal administration of an estate; among the rest, a record of the rates "demandable from the resident cultivators not claiming any transferable property in the soil, *whether possessing the right of hereditary occupancy or not.*" It is further declared "that all decisions on the demands of the zemindars shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at settlement, until distinctly altered by mutual agreement, or after full investigation in a regular suit. But, as fully shown in Mr. H. Mackenzie's note (para. 431), any record of rate must be nugatory in respect of tenants *not possessing the right of occupancy*; for the power to eject is greater than the power to enhance rent, and implies that power. Nevertheless, the sentence I have quoted, in connection with the general law in favor of resident and qudeemee ryots, no doubt helped to support, if not to create, the opinion, which was held by some, that the rates ascertained and recorded were to hold good in respect of all cultivators for the whole term of the settlement. But this opinion was not supported by Mr. Thomason, nor by any revenue officer of authority that I know of.

It is probably to some idea of this sort Mr. Carnegy alludes when he speaks of the *status* and rents of all ryots being fixed by the "jummabundee." So Mr. Conolly, in his remarks on the settlement of Bareilly, says that a restriction on the demand of the zemindar was suggested by this regulation, in accordance with which pottahs were distributed by the Collector.—*Reports on the Settlements, North-Western Provinces, Vol. I.*, p. 534.

and procedure in this branch of their operations, as reported by the Settlement Officers themselves engaged in framing the record. This is shown at length in a paper which I drew up in 1863 in reference to the prescription established by Act X., 1859, extracts of which are attached to this Appendix.*

In paragraph 44 of that paper a suggestion was thrown out by me, which Mr. Wingfield quotes approvingly in his present letter, *viz.*, that the prescriptive rights of the Bengal ryots may have arisen from our early administrators "confounding the more fixed classes of ryots with the *village communities.*" But the larger review which I have now been enabled to take has convinced me that my surmise was unfounded. I am satisfied, both from analogy and evidence, that the khoodkasht or resident cultivator of Bengal was not the village proprietor of the North-West, but the ordinary type of hereditary or proprietary ryot common throughout India.†

The settlement of the North-Western Provinces did not "create a revolution as the proprietorship of land."

It has been assigned as a reason for the very general admission of the zemindars of the right of occupancy in the settlements of 1833, that the talooqdars had been up to that time maintained in possession in the North-Western Provinces, that they were then displaced for the village zemindars, and that "these men having received such a benefit from Govern-"ment were in no humor to quarrel with any conditions it "imposed." A wider retrospect; and a more intimate acquaint-

* See second Supplement.

† Mr. Wingfield is quite right when he says that *khoodkasht* means land which a man *himself cultivates*, and thus, in the North-West, a village proprietor's personal holding. (See remark of Collector of Moradabad on this term: *supra*, p. 55.) But in Bengal, as throughout the peninsula, the ryots *resident in the village* possessed *as such* a preferential right to cultivate the land within its boundaries. In that sense the lands of the village were *their* lands, and not the lands of *pykashts* from other villages. Hence in contradistinction they were termed khoodkasht, namely, ryots who cultivated lands *in their own village*.

ance with the settlement made under Regulation IX., 1833, would have prevented this misconception. From the first year of our administration, talooqas and farms began to be broken up. The proclamation of 14th July, 1802, the basis of subsequent measures, gives the promise that a settlement would be concluded with "the zemindars or other actual proprietors of the soil;" and* (addressing itself at once to the case of large talooqas) that "the settlement of such small talooqas† or estates as may be only nominally included in large zemindarees [*i. e.*, talooqas], will be made separately and distinctly with the proprietors of such small estates, and they will be allowed to pay their revenue directly to the tehseeldars on the part of Government."‡

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* Regulation XXV., 1803, Section 29.—The phrase recurs continually in subsequent regulations.

† *I. e.*, dependent village zemindarees or puttees.

‡ *Ibid, Cl.* 7.—In Benares it will be found that the same principle prevailed. In Section 17, Regulation II., 1795, the common type of village zemindarees, with their puttees and shares, held in partnership or separately, is recognized, and instructions given for the separation of shares when desired. The clause following gives the rules for villages held subordinate to a talooqdar; and another regulation (XXII., 1795) provides, that if the village zemindar could prove that he had held separate from the talooqdar at any time since 1775 (*i. e.*, within the last 20 years) he was now entitled to an independent settlement.

As far back as 1789, we find the Governor-General in Council laying down the following rule for talooqas in Behar:—"That a new settlement shall be concluded with the *actual proprietors of the soil*, whether at present paying their revenues to Government through other zemindars (talooqdars) or not."—*Fifth Report, p.* 452. As a concession to the talooqdars, it was added, that "if any petty zemindars *be desirous* of continuing to pay their revenues through a principal zemindar (talooqdar) as at present, in preference to the Collector, they be permitted to do so; and the settlement for their lands is to be made accordingly with such principal zemindar: but in all such cases a written declaration must be taken from the petty zemindars setting forth their request, with the reason thereof; and the Collectors are to be particularly enjoined to be satisfied that such declarations are voluntary."—*Fifth Report, p.* 467. An exception was made for Bhaugulpore, where in certain cases the settlement was to be continued with the zemindars (talooqdars) direct, not with the *mus-*

Indeed, no one can come into frequent contact with the transactions of Government in the first 10 or 15 years of our rule in the Upper Provinces, without feeling that their most prominent feature was the systematic setting aside of farmers and talooqdars, and the admission of village proprietors to direct engagements. The zeal of Government was quickened by finding that native collectors and others had been forming talooqas by sinister means, even since the cession; but the measures of Government were not confined to those (in Oudh parlance) "auction talooqas." The "emancipation of the village zemindars" (so the measure was distinctly named) proceeded rapidly, even in the case of the ancestral talooqas held by the most ancient families. Detailed rules for regulating and facilitating these proceedings were laid down by Government and the Revenue Board in 1808 and subsequent years. Any one taking the trouble to peruse the correspondence of Government prior to 1818 will see that Regulation VII., 1822, which contains the final rules on the subject, was a simple confirmation in the Legislative Department of a system already busily worked out by the Executive.*

koorec talooqdars (village zemindars); but if any zemindar (talooqdar) exacts more from a talooqdar (village zemindar) than he has a right, or is guilty of oppression, the talooq (village zemindaree) shall be separated from his jurisdiction;" &c.—*Ibid.*

* The correspondence from 1808 to 1820 teems with notices on the subject, and will, I hope, be published. (*a*)

In 1808 the Board of Commissioners submitted a code of rules which the Governor-General in Council had "directed them to frame for the separation of the village zemindars from the authority of the persons through whom they have been accustomed to pay their revenue."

In a subsequent letter they write:—"In regard to the powerful talooqdars in the district of Allygurh, they appear, in fact, to be proprietors of a part of the lands held by them and the farmers of the rest: according, therefore, to the general rules established for the conclusion of the settlement, the leases for the latter would cease to exist, and the actual proprietors would be entitled to be restored to the possession and management of their lands."—2nd September, 1808. In this particular case, however, the rule was "suspended," and the talooqdars, being powerful and rebellious, were, from motives of political expediency, maintained in

(*a*) Subsequently published, see "Selections of Government, N.-W. P., Revenue Department, from 1818 to 1820."

It betrays, therefore, a singular misconception of the spirit and procedure of the previous administration to suppose that the settlement of the North-Western Provinces "created a revolution in the proprietorship of land;" or that "up to that time the talooqdars, farmers, &c., whom we found in possession at the cession or conquest, had engaged with Government for the revenue;" or that "at this settlement they were displaced for the village zemindars, whom we recognized as proprietors in their room."

Mr. Wingfield's letter, paragraph 35.

The process of disintegration was busily at work from the very beginning of the century, and the result had been accomplished in general very many years before. The Settlement under Regulation IX., 1833, was made, *as a rule*, with the "zemindars or other actual proprietors of the soil" who had all along been in possession. The Settlement Officers

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possession. They rebelled nevertheless, and were coerced by military force in 1817. In the following year Mr. Mackenzie, referring apparently to such cases, writes:—'Government will, on the expiration of the current leases, be free from any obligation to the farmers of the public revenue, and there is no longer any ground for compromising the authority of Government, or the rights of the village proprietors, in deference to the supposed influence and the ill-subjugated strength of the talooqdars."—Paragraph 468.

It is unnecessary to quote other passages; but I am tempted to transcribe one more. When the Marquis of Hastings visited the North-Western Provinces in 1814-15, he stated that "the situation of the village proprietors in large estates in farms and jagheers is such as to call loudly for the support of some legislative provision. In Burdwan, in Behar, in Benares, in Cawnpore, and indeed wherever there may have existed extensive landed property at the mercy of individuals,—whether in farm, in jagheer, in talooq, or in zemindaree—of the higher class, the complaints of the village zemindars have crowded in upon me without number." Holding the existing law to be insufficient, His Lordship proposed, and the Court of Directors approved, the adoption of legislative measures "for the protection of the zemindars and ryots in jagheer lands, and for ascertaining, adjusting, and securing the rights of the ryots and all others below the jagheerdars;" &c.—*Report of House of Commons, August 10th, Vol.* III., *Rev. App.*, pp. 83-85.

maintained property as they found it, and simply defined and recorded the rights and respon ibilities of the several shares.

The talooqas actually in existence when the settlement under Regulation IX., 1833, commenced, bore but an insignificant proportion to the rest of the country; and, being for the most part ancestral talooqas, they were generally maintained. The provisions of Regulation VII., 1822, Section 10, Clause 2, were indeed acted on wherever sub-proprietors were found; but the practice in that respect did not differ very materially from the rules for sub-settlements under similar circumstances in Oudh. It was not till after the settlements were for the most part concluded, that rules more adverse to the talooqdars were introduced by Mr. Thomason.*

* Mr. John Thornton's settlement of the talooqa of Moorsan—the type recommended by Government to its Settlement Officers—was formed "by admitting the talooqdar to engagements, and then making an under-settlement with the several village proprietors." This is described as possessing several advantages, "especially as, while it gives much greater security for the Government revenue, it does not at once annul the connection which has long existed between the talooqdar and the village communities, nor does it create the anomaly of granting a perpetual allowance to the former without his incurring either trouble or responsibility in return for it." The spirit of the settlement was thus in favor of the talooqdar.

Government subsequently overruled the arrangements, cancelled the talooqdars' engagements, and directed that the village proprietors should pay direct to Government.—*See C. O., B., dated 11th April*, 1845, in "*Acts and Orders.*"

I must again call attention to the fact that the rules most unfavorable to talooqdars were issued *after the completion of the settlement*, and only influenced the procedure in individual cases which chanced to come up subsequently.

Even Mr. Thomason's orders will be found not so opposed to the superior proprietor as is generally supposed. A practical and detailed exemplification may be seen in Mr. F. Horsly Robinson's report of the sub-settlements, under Section 6, Regulation IX., 1825, made in the Sukrawa jagheer, under Mr. Thomason's instructions. The result is not very different from that of sub-settlements made in Oudh.—See Article XXII. of the *Selec-*

It is hardly needful for me now to say that Mr. Wingfield must be mistaken in attributing the fact that the zemindars of the North-Western Provinces acquiesced in the record of the ryot's heredit ry right to the cause he has done. The assent was voluntary, and the nature of the record as well understood as it is possible any such measure can be amongst a rude and illiterate community.*

Tenant-right in Benares.—(Resumed from page lxvi.)

It remains to consider what light is thrown upon tenant-right in Oudh by the condition of things in the adjacent province of Benares. In a former paragraph† I stated the rules on on the subject laid down by the Legislature, but deferred the question whether or not these rules were in accordance with actual rights as then existing.

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tions from the Records of Government, North-Western Provinces. As has been remarked, I think, by Mr. Charles Currie, the main difference consists in the greater practical stringency by which the claim of the sub-proprietor is in Oudh tested.

* I may, perhaps, have dwelt too long on this part of Mr. Wingfield's report, but I am jealous for the honor of the settlement of the North-Western Provinces, which is often lightly spoken of by persons who know little concerning it accurately, and the grand virtue of which (instead of "creating a revolution in the proprietorship of land") was in an eminent degree to confirm property according to its prescriptive state, and rightly to define and record its incidents and responsibilities.

I have also observed in other quarters the singular notion entertained seemingly by Mr. Wingfield, that the greater part of the North-Western Provinces was held under a talooqdaree tenure till Mr. Bird, or Mr. Thomason, set up the "village system;" the fact, as shown in the text, being precisely the reverse. Shortly after the cession, the Board of Commissioners tell us that "in some districts *no superior landholders* (or talooqdars) *exist*; and that each village forms an acknowledged distinct estate."—*Letter dated 5th July*, 1808. In a district which I myself settled, there was but one solitary talooqdar, the Rajah of Bhudeik, who was confirmed in sole and independent possession of his talooqa, and so continued till 1857, when he rebelled.

† Page 41.

Admitting that proprietary right was as strong in Benares as in the North-West, it might be assumed *à priori* from the principle already laid down, that the *status* of tenants in Benares was also of the same character as in the rest of the Nawab Vizier's territories, of which it formed a part. Being thus originally weak, it might be argued that whatever cultivating rights we now find were developed and maintained by the influence of the Regulations of 1795, which distinctly affirmed the title of occupancy as possessed by a khoodkasht or resident ryot. There are, however, certain considerations which point in an opposite direction.

It may be remarked, in passing, that the Benares districts having been (with the exception of the greater part of Azimgurh) permanently settled like Bengal, the subsequent "settlement" operations in them were confined to measurement and record of rights, and affected agricultural interests in a very much less degree than did the settlement of other parts of the North-Western Provinces.

Now it is remarkable that in the Benares Division tenant-right is beyond comparison stronger than in any other quarter of these provinces. It is common for cultivators not merely to sublet, but to mortgage, and even to sell, their holdings. Act X., 1859, seems to have had a rather unexpected effect in *checking* the practice of sale, the idea gaining currency that under that law the transfer of a cultivating tenure was not valid without the zemindar's sanction. It will be seen from the note subjoined* that (besides prescriptive hereditary tenures, which are very generally transferable) cultivating tenures, on lease for an indefinite period, are being created in Jounpore by the zemindars themselves; and that these are not only heritable, but transferable. Such is the tendency in a district which adjoins the province of Oudh.

* The Tehseeldar of Chunar states that in some parts of Mirzapore "the practice of sale is less and that of mortgage more. In some of these mouzahs zemindars themselves have taken lands on mortgage from cultivators."

The ryotee tenure is also the subject of mortgage, and sometimes of sale, in Ghazeepore, Mirzapore, and Benares. There is nothing either in the regulations or in the Revenue and Civil procedure which could of itself have suggested the idea of a transferable right vesting in the cultivator; it has grown up spontaneously amongst the people in their dealings one with another; and we find it in full force in portions of the province side by side with the Oudh Districts Pertabghur and Fyzabad.

"In Ghazeepore, Mr. J. Smith, Assistant Collector, writes, that within the last two years he has met with 13 cases of sale of cultivating tenures in execution of decrees of the Civil Court; two were of the rights of gauwadars (a tenure which seems to resemble the Oudh shunkullup by purchase); and 11 of "mouroosee kashtkaree (hereditary cultivator's) rights." Apparently the zemindar's consent is necessary to legalize such a sale.

(1) In Joumpore we have the *mouroosee* or hereditary cultivator holding one piece of land at the same rate, from a time probably long antecedent to Mr. Duncan's settlement; this is the most numerous of all kinds of cultivators in the district. (2) The *non hereditary*, but holding by pottah for an unlimited term of years. These are in much the same position as the hereditary cultivators, for so long as they pay in accordance with the terms of their pottah, they can neither be ousted, nor can their rent be enhanced. These cultivators are numerous, *and are daily becoming more so.* (3) Cultivators having right of occupancy by 12 years' prescription. These are not numerous, mostly cultivators (besides subtenants) either being mouroosee (hereditary) or having rights by pottah. (4) Sub-tenants (shikmees), who cultivate under a head ryot or occupy the zemindar's seer. These are numerous, and are the only real tenants-at-will.

"The right of transfer by sale or mortgage of hereditary cultivating tenures has been in this district carried to an enormous extent. A hereditary holding has been regarded as the absolute property of the holder. Within the last two or three years, however, the Civil Courts have refused to recognize any transfer as legal unless made by the consent of the zemindar; and this has stopped the practice of indiscriminate transfer. As a rule only the lands of (1) mouroosee and (2) pottah-holding tenants are transferred."—*Note by Mr. W. H. Smith, Officer revising Settlement Records in Jounpore.*

I am indebted to Mr. W. Duthoit for the information contained in this note.

Apparently it does not exist in the parts of Azimghur not permanently assessed, but settled temporarily in 1837 with the rest of the North-Western Provinces,—a fact which would seem to imply that the settlement of the North-Western Provinces is *less* favorable to the growth of a strong hereditary and transferable title than the system of Bengal and Benares. The clauses in the Benares Regulations of 1795 declaratory of the interest of resident ryots may have had an important influence in fostering their rights. But in other respects the facts suggest that the ryots' tenure in Benares originally resembled in its permanency and substantial character that of Bengal.* It is possible to conceive that the two

* Mr. Duthoit has searched the early Benares records, and what little he has found bearing on the subject is embraced in paragraph 30 of his Report (third Supplement), and tends to show the existence, on our first occupying the country, of a strong ryotee or cultivating tenure.

In 1794, in reference to a claim by a Captain Cullen to get possession of certain lands, the Assistant Resident writes, that "nothing but compulsion, in which much blood will be shed, will ever make the cultivators give up the residue of these grounds; as although they, strictly speaking, are not *chupperbund* ryots, from their families and habitations being in the adjoining villages, still the most of them are relations of the zemindars, who have all their lives cultivated the same fields, and their claim is very little, if anything, inferior to that of those denominated chupperbund ryots."

In 1793 Ameens were sent over the province to enforce the delivery of pottahs. "In many places the ryots objected to receive the pottahs tendered to them; and from the variation of the rates in the different pergunnahs and districts and other local circumstances, disputes were occasioned where both the proprietor and the cultivator of the lands were before satisfied with the rates of assessment that had been mutually agreed upon between them. The rules in Regulation IV., 1795, were accordingly passed: under these, where any dispute arises between a proprietor or a farmer of land and a ryot regarding the rates of pottahs, the latter, by application to the Court of Jurisdiction, can always obtain a pottah at the ancient and established rates of the district."—*Government letter, dated 26th June, 1795.*

In 1831, the Governor-General, after a careful enquiry into the question of rights in the domains of the Rajah of Benares, wrote as follows:—"Pergunnah rates of division, regulated by qualities of soil and kinds of

systems--that of the North-West, with a strong proprietary and a weak ryotee title, and that of Bengal, with a weak proprieta y and a strong ryotee title—met each other in the province of Benares; and that hence the cultivating title always existed there in greater strength than further west; and that, being in conformity with the notions and usages of the people, it rapidly developed under the protection of our laws into a *quasi* proprietary interest.

This theory may account for the custom in favor of the ryot being seemingly stronger in the eastern districts of Oudh, which border on Benares, than in the western, which merge into the North-Western Provinces.

Family Domains of the Rajah of Benares.

Connected with this question is the remarkable phenomenon of ryot proprietorship in the family domains of the Rajah of Benares. These formed a portion of the Nawab Vizier's dominions at the close of last century; and the position of the Rajah in many respects closely resembles that in which the larger talooqdars of Oudh have now been placed.* The "Domains"

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crop, were, His Lordship has heard everywhere, known prior to the settlements formed by our Government; but not so money-rates of rent, the existence of which is gratuitously assumed in the English regulations. To have insisted on a strict observance of these rates on the part of the Rajah in his dealings with his tenants would not, His Lordship is disposed to think, have been inconsistent with the ancient usage of the country; the superior entitled to the rent and the inferior possessing a right of occupancy, being each left to reduce the other to the alternative of taking or giving the rent in kind according to the *buttai* rate, if money commutations would not be agreed on to the satisfaction of both parties. If a rule of this sort had been observed throughout the country, the difficulty that that has been felt in reconciling a right of occupancy in an inferior with a right to regulate rights in a superior would, perhaps, have been removed."—*From Mr. W. H. Macnaghten, 22nd April*, 1831.

Indeed, it was avowedly on the analogy of the system in force in the Family Domains, that Mr. Wingfield grounded his proposal in 1859 for conferring revenue jurisdiction, even in cases affecting themselves, upon the talooqdars of Oudh.

have never been administered under the general regulations; and the Rajah himself has controlled their revenue management with the powers of a Collector of Land Revenue. The Rajah's pergunnahs approach within a few miles of Pertabgurh in Oudh, and the condition of the peasantry may be presumed originally to have been the same.

For these reasons the Domains afford an interesting field of analogy on the present occasion, and I accordingly requested the able officer in charge of them, Mr. W. Duthoit, to furnish me with a report on the present rights of the ryots in the Rajah's pergunnahs, and their supposed original position. The report is so valuable, and so apposite to the occasion, that I have attached it to this Appendix.*

The Rajah of Benares is held to be "zemindar" and proprietor of the whole of his domains. The present Rajah is a good landlord, but his predecessors "devoted their energies to extinguishing sub-proprietary rights and increasing the revenue demand." When at last the Government proceeded in 1832 to investigate and maintain the subordinate right of village proprietorship, they found it to survive in less than 600 out of 2,000 estates, although it is believed originally to have existed almost everywhere.

But in proportion as the subordinate zemindaree rights were crushed out, the rights of the ryots gained strength; and now the whole of the populous and prosperous pergunnahs of Bhudoee and Gungapore is held generally under the tenure of ryot proprietorship. This has taken place not only without objection on the part of the Rajahs, but under their fostering hand. The ryot's property in the soil is so valuable that it fetches sometimes above Rs. 100 a beegah.† The occupant expends labor and capital on his holding. The country thrives; no part of the North West is more prosper-

* See third Supplement.

† See Appendix to Mr. Duthoit's Report.

ous; and the Rajah has his reward in a secure and flourishing revenue.

It is strange, almost within a stone's throw of Oudh, to find this great talooqdar encouraging a right which, it is said, the talooqdars of Oudh look upon with so much jealousy. The example might be studied by them with profit, and they, too, might secure a prosperous revenue and a contented peasantry by following in the steps of the Rajah of Benares.*

* After this paper was in type, I received an interesting note from Baboo Shiva Pershad, Inspector, Educational Department, in the Benares Division, who possesses estates there. I quote some sentences which illustrate the advantage to the landholder of an hereditary ryotee title, and the manner in which an intelligent zemindar proceeds in fostering the tenure.

"When I took the villages, I made it my object to increase the income and to reduce the trouble of collection. This object was not to be gained by increasing the seer land, because there was already plenty of that lying waste without anybody to look after it; or by enforcing a rack-rent, because several ryots had already fallen into arrears and were ready to give up their lands. My time was too precious to do the work of a cultivator. I wanted to content myself with the profits of a zemindar. My friends advised me to make over the villages to a theekadar, or at least to a karinda. I did not like this. The money which was to be pocketed by the theekadar or the karinda I thought it better to be left with my tenants. It was my firm belief that by increasing the prosperity of my tenants I was increasing my own prosperity and comforts. I became soon convinced that my object was to be gained only by increasing the value of land; that is, by making the land more valuable to the tenants. I knew the Government realizes more and with less trouble in the permanently settled district of Benares than in such a periodically settled district as Banda is; only because the village which is worth Rs. 1,000 in the former will not be worth Rs. 500 in the latter. In Benares the zemindars cheerfully pay to the Government even up to 90 per cent. from their nikasi kham, whereas in Banda many cannot pay or would not pay 50 per cent. This proved to me how the people like permanency. I told them that I was ready to give leases for ever (mouroosee or hereditary pottahs) to those who agreed to pay full fair rent; and no sooner this was known than the tenants-at-will (ghair mouroosee) came at once forward and raised their rents from 50 to 100 per cent. New asamees came from neighborhood with capital, built cottages, and broke waste land. In short, my income has increased during the last four years at

Recapitulation.

I will briefly recapitulate the conclusions which appear to be established by this review.

The condition under which the soil is occupied over the greater part of India (exclusive of the North-Western Provinces) is that of cultivation by ryots who possess the right of hereditary occupancy; this, where not already a transferable right, has a tendency to grow into it, there being generally no proprietary title intermediate between the Crown and the cultivator.

The tenure sometimes resembles "village proprietorship," but ordinarily in the *bhyachara* form only; that is, the form in which each man's holding constitutes his proprietary share.

It is presumable that the original title under which land was held throughout the Peninsula (including, perhaps, in respect of its ancient condition, the North-Western Provinces) was that of ryot occupancy, or *quasi* proprietorship.

The ryot's title was not displaced or materially weakened by the system, prevailing in Bengal and elsewhere, of "official zemindarship."

But in the North-Western Provinces it was either originally less strong, or was materially weakened by the superior right of property which at a remote period supervened in the shape of "village proprietorship."

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least by one-fourth; and the land becoming mouroosee, that is, with the right of occupancy, has become so dear and valuable to my tenants that now seldom they fall into arrears. During the last four years I have had not a single case of kurkee (distraint) or sale."

* * * * * *

"By the terms of the leases the land is not now transferable without my written permission, and this gives me opportunity at the time of recording my permission to raise the rent, if the land is capable of that. Several other landholders are following my example gradually."

Our administration should afford every facility both on the side of the landlord and tenant for the formation of such tenures.

Upon enquiry in 1818, it was generally held that a zemindar in the North-Western Provinces had the right to oust a ryot if he received the offer of a higher rent than the occupant agreed to pay; which, however, implied, in general, simply an appeal to custom, competition being unknown.

Tenant-right in the North-Western Provinces was, by the application of the Bengal system, fostered into the strong form of hereditary tenure extensively recognized in the Settlement under Regulation IX., 1833.

In Benares the ryotwaree system of Bengal, and the "village proprietorship" of the North-Western Provinces, originally met each other. Tenant-right, it may be for this reason, is stronger in Benares than in the North-West; and the same cause may account for the custom in favor of the ryot being apparently stronger in the east than in the west of Oudh.

In other respects tenant-right in Oudh resembles the original tenant-right in the North-Western Provinces, as far as it can be gathered from the records of 1818.

W. MUIR.

FIRST SUPPLEMENT TO APPENDIX III.

Extract from Mr. Holt Mackenzie's Minute regarding the position of the Cultivating Classes in the North-Western Provinces.

428. The zemindar appears generally to commute his share for a money payment, the commutation price being adjusted while the crops are still on the ground; the extent of the produce being determined on a survey by the kunya of the village, and the price regulated by the bunneeah or corn-dealer, with reference to the price at the adjacent markets.

429. Both those persons are stated to be more closely connected with the ryots than with the zemindars, the arrangement thus affording great security to the former. The zemindar, however, on the other hand, is usually entitled by custom to a certain advance on the market price, and the village expenses are ordinarily paid by the ryots, or from the admitted ground of an extra demand by the zemindar.

430. With respect to money rents—that is, rents of which the amount is settled by the extent and quality of the fields, not by the extent of their produce—they are stated to be, generally speaking, adjusted annually; the settlement for each year commencing with the month of Asarh in the preceding one.

431. The amount of those rents, like the proportion belonging to the landholder where rents are taken in kind, varies greatly in different situations, any general pergunnah rates appearing to be almost unknown: it is stated to be in most cases regulated by mutual agreement or local custom. The force of those terms, however, appears to require further explanation; thus, where the rents are stated to be fixed by mutual agreement, it ought to be known what the relative situation of the parties is previous to the agreement. If the khoodkasht ryots have no right of cultivating except under an agreement with the zemindars, it is not apparent in what they differ from the pykasht ryots, excepting, indeed, that their attachment to their homes may probably, and apparently does,

enable their landlord to get from them a higher rent* than he could obtain from those who are bound to the soil by no hereditary ties. If, again, they are entitled to occupy their fields independently of all engagements, and the settlement with the zemindar is only of use as it enables them to cultivate articles which they could not afford to raise on the condition of dividding the produce, it is not easy to understand how such a right can be reconciled with the right stated to be vested in the zemindar of ousting a khoodkasht ryot in favor of a higher biddor. In like manner, the possession by the zemindar of such a right would seem altogether inconsistent with the notion that the ryots are entitled to continue in the occupation of their field so long as they pay the customary rent, since, if we admit the right, the reference to custom, although it may be a principle ordinarily observed in practice, can no longer be considered one of which the ryots possess any right to require the observance.

432. The question is one of the highest importance, and I may be permitted to regret that the Board of Commissioners should not in their report have entered more fully on the subject: they have not, indeed, given any opinion upon it; contenting themselves with observing that the right is usually claimed, though seldom exercised, by the zemindars, and that it remains to be settled by the Courts, unless determined by a legislative enactment.

* It has been justly observed to me by Mr. Newnham, in a private communication received since this memorandum was written, that the real advantage of the pykasht ryot is not equal to what he appears to possess from a comparative statement of rents: he usually cultivates land of inferior quality, or, at least, more distant from the village; and the labor of a daily journey to his field forms, of course, a material deduction from his profits. Still, however, I believe it will be found that the pykasht ryots are frequently the most favored.

† It was a very important observation of Mr. Colebrook's, when lamenting the little that had been done towards settling principles in Bengal, that while Government looked to the Courts for the determination of disputes between landlord and tenant, without providing definite laws for their guidance, the Courts of Justice, on the other hand, looked to the regulations alone for the rules for their decision.

433. The Collectors, with two exceptions, are in favor of the claims of the zemindars. Of the officers who oppose these claims, one considers the zemindar entitled to raise his rents on any increase in the public demand, and the other (Mr. Chamberlain, Officiating Collector of Saharunpore) founds his opinion against the zemindars chiefly on the ground that the Government jumma being fixed with reference to the existing rates, the zemindar with whom the settlement is made becomes virtually bound to adhere to them, under his engagement with Government.

434. In Bundelkhund there appears to be no resident cultivators who are not also proprietors, and the Acting Collector of Moradabad (Boulderson) remarks that he considers the only real description of khoodkasht ryots to be of the family of the zemindar.

435. This last officer, however, would seem to qualify his opinion in favor of the right of the zemindar to oust all other ryots by adding—"*should he refuse to pay the rent demandable from him*;" and again, in his report from Sydabad—"*in the event of his refusing to pay what may be from local circumstances the real and just value of his land.*"

436. The other Collectors appear to lay down the principle broadly.

437. The opinion, however, is so much at variance with what had been ordinarily considered a fixed principle in the revenue system of India, and involves consequences so serious to a large portion of the people, that it could only, of course, be admitted as a general truth after the most careful enquiry into local usage.

438. As yet the evidence before Government seems insufficient to justify a decision either affirmatively or negatively.

439. In point of fact, the question has never come fairly to issue between the zemindar and the ryots. Land being

more abundant than labor, the resident ryots are still, practically speaking, able to protect themselves against excessive exactions; and though the strength of their local attachments appear generally to enable the zemindar to levy from them more than he can obtain from strangers, who have no such ties to bind them to the spot, yet, in general, the zemindar has greater reason to dread the desertion of his ryots than they to fear expulsion from their lands: the instances, accordingly, would appear to be few in which the zemindars have actually exercised their doubtful right of dispossession.

440. It will, however, naturally be one of the effects of a permanent settlement gradually to alter this state of things; and it is thence the more obligatory on Government, in giving that boon to the proprietors, to neglect no means of ascertaining and securing the rights of the ryots. In cases, indeed, where it shall be found that the custom of the country has not vested those persons with any positive rights of occupancy beyond the terms of their leases, or (where no leases exist) for the current year only, Government would not, I presume, be disposed to create such rights.

441. It will nevertheless be almost equally desirable to have a detailed raibundee or statement of the Mofussil settlement of each village; since, even supposing the ryots to enjoy no permanent rights, the present state of things will last for a considerable time; and it may be equitable for the Courts to assume the rates existing at the period of the settlement as their guide in determining between landlord and tenant, and specific engagement to the contrary shall be exhibited.

442. On the other hand, if the ryots shall be found to possess a prescriptive right of occupancy, subject to the payment of customary rents, I need not urge how essential to the preservation of such rights it is that the custom should be ascertained at the period of forming the settlement.

443. In observing the general statement of the Collectors in favor of the zemindar's right to dispose of his lands to the highest offer, and to the greatest doubts which, consequently, arise as to the rights of the ryots, one cannot but be struck with the contrast offered by such a state of things to the views entertained in regard to the resident ryots* in the Lower Provinces.

444. However much, in practice, the privileges of those persons may have been abandoned, the existence of such privileges seems never to have been questioned.

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* One point appears to deserve special notice,—*viz.*, the right of the ryot in the trees which he or his forefathers have planted.

In Behar it is, I have understood, universally admitted that such trees cannot be cut down by the zemindar without the ryot's consent, and that they share half and half in the produce. It is to be feared that the auction-purchasers have too often destroyed the source of solitary luxury to the husbandman.

SECOND SUPPLEMENT TO APPENDIX III.

Extract from a Minute by W. Muir, Esquire, Senior Member, Sudder Board of Revenue, on the Prescription established by Section 6, Act X. of 1859, *dated 29th May,* 1863.

I am afraid that Act X. of 1859 has not left the question of tenant-right upon a basis on which it can be permanently maintained.

2. The law, providing a possessory prescription from simple occupancy for 12 years, can, of course, only be sustained on the ground that it is required by the custom and practice of the people.

3. Had the recognized custom and practice been clearly to this effect, I should not have sought to re-open the question on any grounds of expediency, because I think that our legislation should be based on the existing *status* of rights, and the popular feeling and conviction in respect of their acquisition or growth. I do not think that legislation on matters connected with the occupancy of the soil can hope to succeed unless it is built upon the habits and axioms of the nation. Economical theories are a dangerous groundwork when opposed to these. Felt and practical evils of an urgent nature would alone justify the pursuit of a different course; and even then with the utmost caution and the smallest possible divergence from existing rights and long-established principles and customs.

4. So that, if the growth of a prescriptive title from 12 years' occupancy has been a custom of this character, the law requiring the Collector's Court to take knowledge of it and decide accordingly would merely have fulfilled an obligation devolving upon it.

5. I believe, however, that the case is not thus;—that there is no clear custom on the subject; and that, on the con-

crary, the sense of the proprietary body is, that if we have not imposed a new custom to their disadvantage, we have at least imposed an old one with a stringency and imperativeness as to its sudden development which were unknown before.

6. In paragraph 5 of our address dated 25th January, 1861, in reply to a call regarding the practical working of Act X. of 1859, our Board ventured to question whether the provisions of Section 6 were in accordance with local custom; and added:—"It is impossible to create rights, or, at least, it is highly impolitic to do so, in the face of a decided and general feeling against them."

7. The discussion of the question in the press of the day must have led most persons to an attentive consideration of the subject; and I confess that the longer it is pondered over, and the more that intelligent native opinion is consulted, the more strongly do I feel that the expression of our Board's opinion above referred to is justified, or rather, that it does not go far enough.

8. I have been led, consequently, to the examination of the various opinions which have been preserved on our records respecting the question of the tenant right of occupancy prior to 1857.

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Notices of right of tenant occupancy in the old regulations.

10. First, the following regulations touch on the subject:—

Regulation LI. of 1795, for Benares, Section 10, states that khoodkasht or chupperbund ryots cannot be dispossessed so long as they pay their rent, and that they are entitled to renewal of pottahs at established pergunnah rates.

Regulation XXVIII. of 1803, Section 32, Clause 7, provides for the case of tenants having the right of occupancy so long as a certain rent, or a rent determinable on certain principles according to local rates and usages, is paid.

Regulation VIII. of 1819, Section 11, Clause 3, and Regulation XI. of 1822, Section 32, recognize "khoodkasht, or resident and hereditary cultivators," or "khoodkasht and *qudeemee*" ryots, as not liable to ejectment: and so also Acts XII. of 1841 and I. of 1845, Section 27, Clause 3.

Regulation VII. of 1822, Section 9, Clause 1, directs the registration, in the paper of village rights, of cultivators, "whether possessing the right of hereditary occupancy or not."

11. It is thus evident that the regulations have, from the first, taken for granted the existence of a class of cultivators as having, under various denominations, the right of hereditary succession; but they nowhere define what constitutes a title thereto, how it originates, or whether it can grow up under certain conditions in favor of persons not before possessing it. All this was left vague and undetermined; the Civil Courts were supposed to judge upon the merits of each individual claim according to the custom of the country, whatever that might be.—See close of Section 32, Regulation XXVIII. of 1803.

12. The rule enjoined at the settlement under Regulation IX. of 1833 was to record in the khutteoonce every cultivating holding under the denominations of proprietary, hereditary, non-hereditary, or service; and to secure the complete classification of the area under these heads, the total of each class is required to be given in the English Statement No. II. But the Board, in their Settlement Circular No. I. of 1838, laid down no rule to discriminate hereditary from non-hereditary ryots. In paragraphs 144 and 145, it is simply provided that where the claim of hereditary occupancy is advanced by the cultivator and denied by the proprietor, resort is to be had to decision by punchayet; or, should either party desire it, to the decision of the Collector himself.

Board's Settlement Circular No. 1 (published in 1838-39).

13. The Directions to Settlement Officers, published by Mr. Thomason in 1849, are not more explicit: they lay down that residence in the village is not necessary to the privilege: "those who have for a course of years occupied the same field at the same or at equitable rates are held to possess the right of continued occupancy, whilst those whose tenure is not similarly sanctioned are considered tenants-at-will. In practice it is not difficult to draw the line." This, however, brings us no nearer to any definite and tangible rule.

Directions to Settlement Officers, paragraphs 126—131.

14. It becomes, then, of the highest interest and importance to discover what was the test and rule of procedure followed by the various Settlement Officers in determining which classes should be recorded hereditary and which simply tenants-at-will. I take the following notices on the subject from the various settlement reports. Without being exhaustive, they will sufficiently indicate the course pursued by the ablest and most experienced officers employed in that department.

Settlement Reports.

15. Mr. Thomason has discussed the rights of hereditary cultivators in paragraphs 86 to 98 of his Report on the Settlement of Azimgurh, written in 1837.

Mr. Thomason's Report on the Settlement of Azimghur.

Para. 88.—"The period," he writes, "which constitutes such prescriptive right has been nowhere settled; probably the Civil Courts would recognize the term of 12 years as sufficient. Not unfrequently tenures of this sort originate in contracts entered into by the zemindars themselves with cultivators whom they may engage to bring waste land into tillage." The right is not carried to new fields. (*Para.* 89.)—Where an estate is sold for arrears of revenue, the old proprietors have an hereditary right of occupancy in their seer lands; but where their rights and interests are sold by decree of Court, they become tenants-at-will. "It is clear that non-

(See also Directions to Settlement Officers, paragraphs 132 and 133.)

proprietary cultivators of this third class" (*viz.*, tenants-at-will) "by long prescription would rise to the second class, and acquire the right of holding their land at fixed rates." (*Para.* 90.)—The Civil Courts could take cognizance of such a claim. (*Para.* 100.)—"If it were desired to introduce the European system of farming—or, in Indian parlance, to make the whole lands of the village seer—this could only be effected by purchasing up the rights of the two first classes, and by purchasing out or ejecting the last class." (*Para.* 101.)

Mr. Thomason's draft of Revenue Code.

16. I may here draw attention to the unfinished draft of a Revenue Code in the 2nd Volume of Mr. Thomason's Despatches. At page 343 the rights of an hereditary cultivator are described; and at page 344 it is proposed that uninterrupted occupancy at will for 12 years at the pergunnah rates, or at less than the pergunnah rates, should become occupancy by prescription.

17. This draft was one of Mr. Thomason's latest works, and it shows that the views he acquired as Collector and Settlement Officer he held consistently to the end. These views are in complete accordance with Section 6 of Act X. of 1859.

Sir H. M. Elliot's Report of the Meerut Settlement.

18. Sir Henry Elliot, in his Report of the Meerut Settlement (paragraphs 66 and 67), states, that if tenants-at-will "continue resident, their offspring is destined to become mouroosee after the lapse of one or two generations." Regarding the mouroosee class, they are described as having "only a heritable privilege, if privilege it can be called; while the right of ouster unquestionably rests in the zemindar. That right, however, is never enforced, nor is it likely to be, as long as a large portion of the country remains to be reclaimed." Nevertheless, in view of future changes, which might lead zemindars to interfere with their prescriptive occupancy, Sir Henry thought that it "would be as well by some legislative enactment to provide against the contingency, and subject the exercise of this authority to some limitation and control."

19. In Allygurh Mr. Rose reports* that the term "mouroosee" simply indicates residence; and that many *pykasht*, as well as *mouroosee*, cultivators had the right of occupancy. The lists of cultivators having the right of cultivating at fixed rates were drawn up with reference to their having enjoyed that privilege "for a length of time." In Cawnpore, also settled by Mr. Rose, the land registered as in possession of hereditary cultivators amounts to nearly 400,000 acres, while that cultivated by tenants-at-will is but 164,500 acres.† I may mention that very much the same proportion prevails in the adjoining district of Futtehpore, ‡ where the hereditary cultivators are 52,713, and cultivate 312,631 acres; non-hereditary cultivators are 31,623, and cultivate 118,114 acres.

Mr. H. Rose on the settlement of Allygurh.

Settlement of Cawnpore.

Settlement of Futtenpore.

The remarks of Mr. Timins, the Settlement Officer of Futtehpore, on the subject, paragraph 93, are somewhat contradictory; but they imply the "very general" existence of a class of cultivators "holding the right of possession at fixed rates."

20. In Bareilly, "the details of *mouroosee* and *ghair mouroosee* cultivators were drawn out according to the mutual consent of both parties." No rule is mentioned by which differences were settled.

Mr. J. W. Muir's Report on the Bareilly Settlement, Vol. I., page 569.

21. In Moradabad, "previous to the present settlement, the rights of cultivators were very undefined." The power of asserting the title to succes-

Mr. R. Money's Report on the Settlement of Moradabad, page 435.

* Vol. 1 (new edition) of Settlement Reports, p. 390.

† Montgomery's Statistics of Cawnpore. p. 39. ‡ Kinloch's Statistics of Futtehpore, p. 75.

sion depended on whether the heirs were young or grown up at the death of the father. At the settlement the title to succession was uniformly provided for in the case of those recorded as "hereditary cultivators."

Mr. Mansell's Report on the Settlement of Agra, paragraph 19.

22. In reporting the settlement of Agra, Mr. Mansell, while admitting the difficulties in the way of interfering between the proprietor and cultivator, says that "the right of the old asamees resident on the estate to some protection from arbitrary exaction is certainly the constitution of this part of the country;" and the settlement record accordingly protects them from ejectment as long as they pay the proper rent.

Mr. G. F. Edmonstone's Report on the Settlement of Mynpoorie, paragraph 39.

23. In Mynpoorie, Mr. G. F. Edmonstone writes:—"The proprietors have been informed that they have no right to interfere with the rates of hereditary cultivators."

Mr. M. R. Gubbins' Report on Etawah, paragraph 37.

24. In his Report on the Settlement of Etawah, Mr. M. R. Gubbins refers to the extreme poverty and dependence of the ryots of the zemindars as the cause of the former "having foregone their just title of hereditary occupancy, from fear of thereby exciting the displeasure of the land-owner. With very few exceptions, the cultivating classes have been recorded as tenants-at-will, even for such occupancies as they and their parents before them may have held for many years." This is remarkable in a district adjoining Cawnpore, and similar to it in every respect; for the result in Cawnpore, as I showed above, was very different.

25. There are references in other settlement reports on the subject; but, so far as I have noticed, they coincide with

the foregoing opinions in the recognition of the right of the hereditary class, excepting in the following instance :—

Mr. E. Thornton's Report on the Settlement of Saharunpore, paragraph 45.

26. Mr. Edward Thornton, in his Report on Saharunpore, writes that "the cultivators, who are not zemindars, are throughout the district, to speak generally, simply tenants-at-will." The right to hereditary occupancy was only recorded when put forward by the cultivator; and when objected to, it is not stated on what ground the difference was settled. Mr. Thornton mentions with disapprobation the practice of his Deputy Collector in recording the hereditary title on the simple establishment of 10 or 12 years' occupancy. He was apparently opposed to the expediency of recognizing the hereditary title,* and his theoretical views no doubt affected his practice. The same views and the same results appear in his settlement of Moozuffernuggur.†

27. I may mention, that at an interview with Mr. Edward Thornton, after the passing of Act X. of 1859, he expressed to me much astonishment at the enactment of the right of prescription after 12 years' occupancy, and stated his belief that the principle thus laid down was not borne out by any recognized custom or universal feeling.

Review of the opinions and practice of the Settlement Officers.

28. It is evident from this review that the practice at the settlement under Regulation IX. of 1833 varied exceedingly, and that the results in districts apparently similarly situated were extremely different; in some a large majority being recorded as having rights of occupancy, in others a very small minority. No distinct rule or test was anywhere propounded. Mr. Thomason speaks of

* See page 111, Vol. I., (new edition) Settlement Report.

† Paragraph 34 of his Report, page 155, Vol. I., Settlement Report.

12 years as likely to be recognized by the Courts. Mr. Edward Thornton reversed that rule, when he found it practically applied by one of his subordinates.

Practice of the Revenue Authorities under the old Summary Suit Law.

29. I will now give some account of the proceedings which ended in the orders of Government providing the rule of 12 years' prescription for the *Summary* Suit Court.

Views of Messrs. H. Lushington and F. H. Robinson.

30. In 1850, Messrs. H. Lushington and F. H. Robinson, then officiating as Judges in the Sudder Court, addressed Government on the extremely uncertain state of the law and record of tenant occupancy, and the rule for enhancement and abatement of rent. Recognizing the rights of a very large class of cultivators to hereditary occupancy at moderate rents, and the unsuitability of the Civil Courts to adjudicate such claims, they proposed that their trial should be made over entirely to the Revenue Officers, who should decide according to local custom.

19th February, 1850.

31. The Government (Mr. Thomason) declined the proposal, but admitted the necessity of securing a more perfect record of existing rights, and requested the Board to take measures for completing and amending the settlement registration wherever it was found defective or wrong.

Views of Messrs. Boulderson and Robinson: Proceedings, 12th March, 1850.

32. The Board, in reply, pointed out that a record of "pergunnah rates" should have formed a part of the settlement under Regulation IX. of 1833: they proposed to remedy this alleged omission, and also to secure "a record of the rule of practice or acknowledged custom by which a tenant-at-will rises into the class of privileged ryots."

33. In September of the same year Mr. Robinson brought forward a draft bill, with annotations by Mr. Lushington, requiring the Civil Courts to refer cases regarding occupancy and rent for opinion to the Collector. This object, so far as suits for enhancement and abatement of rent are concerned, was secured in 1859, by a Circular Order of the Sudder Dewanny Adawlut. There is a note by Mr. H. Lushington to this bill, in which he records his opinion against any rule for the conversion of tenancy-at-will into prescriptive tenancy; and this note is so valuable and important that I transcribe it here at length :—

Proceedings, 6th September, 1850, No. 114, *et seq.*

Mr. Lushington's opinion against any process for converting tenancy-at-will into an hereditary tenure.

"I thought a good deal about the process by which a tenant-at-will, or pottah-holder, might become a cultivator with right of occupancy; but I have at last come to the conclusion that there is no good reason why a cultivator should move from one class to another, and it is next to impossible to declare the process. Akbor and his Minister, and many other Kings and Ministers who attended to the subject, have asserted the wisdom of upholding the hereditary resident cultivator; but there are many considerations. Did Akbor allude to the same class that we allude to? or to those agriculturists (muqquddums and *village* zemindars) whom we have made proprietors? Moreover, these hereditary *jotes* will not be very rapidly extinguished if the country is prosperous and increasing in population; they will, no doubt, fall in occasionally; but the country will be all the better for that, since the rights of sub-tenants will always interfere with the successful and profitable management of land by proprietors. Good tenants-at-will might and would get themselves recorded on the revenue records by consent of proprietors, by purchase, &c; but I can find no way of declaring that, under such and such circumstances, a tenant-at-will shall become a cultivator with right of occupancy. Therefore I have proposed no clause on the subject."

34. I must confess that the wisdom of these remarks, and the justice of the conclusion formed by Mr. Lushington, approves itself to my judgment the more I consider the subject.

35. The discussion rested till 1855, when the question of disputed rates of rent was settled, as above observed, by a Circular Order of the Sudder Dewanny Adawlut. But the practice as to the ousting of tenants continued on an unsatisfactory basis. It had been ruled,* that, excepting for an outstanding arrear of rent, the law provided the zemindar with no summary process for ejecting either a tenant-at-will or an hereditary ryot; and that, to effect his purpose, the proprietor must file a suit in the regular Court. It was, therefore, laid down that *any* ryot proving his ejectment in the Summary Court must be summarily restored to possession.

Discussion in 1855 as to the law of ouster.

36. The state of things arising our of this course of procedure had become very burdensome to the zemindar; and the Board, in 1855,† under Mr. Colvin's instructions, called for opinions upon the question of the right of occupancy generally, and the remedy in particular for the confusion arising from the above rule.

37. On the 10th July, 1856, the Board submitted the opinions received in reply, which showed a very general impression that 12 years' occupancy conferred at the least a *prima facie* prescriptive right.

38. The Board, in their address, accordingly proposed, that, so far as the Summary Court of the Collector was concerned, the right of the proprietor to eject a tenant whose occupancy fell short of 12 years should be enforced, but not in respect of those who proved a longer occupancy. Similarly, if a ryot having been ousted could prove an occupancy of 12 years, he was to be restored summarily by the Collector to possession.

* See paragraph 129 of Directions to Settlement Officers, and page 278 of Directions to Collectors.

† Circular Q., dated 29th May, 1855.

39. This was a satisfactory solution so far as the law then admitted, for the zemindar was still at liberty to repair to the Civil Court, and, by a regular suit, set aside tenure even older than 12 years, if he could prove it to be non-hereditary. This privilege may have been difficult to enforce, because the undefined nature of what constituted an hereditary title; still the knowledge that the point was open to review on its merits in the Civil Court tended to prevent the rule of 12 years' occupancy being held an absolute and final test of prescription.

State of the law of ouster at the time Act X. of 1859 was passed.

40. Such, then, was the state of things when Act X. of 1859 was passed. There was a summary process for maintaining a ryot of 12 years' standing in possession until the zemindar proved in the Civil Court that he was a tenant-at-will.

Change introduced by Act X. of 1859.

41. It is needless to say that Act X. introduced a radical change, and that the rule which simply guided our *Summary* Courts has now become an absolute rule in the last resort. After 12 years' possession no ryot can be ousted; a full and absolute title of hereditary occupancy is created.

Only justifiable by established custom of 12 years' prescription.

42. Now, had this been an universally recognized incident of property according to established habit and custom, the law would have been defensible, on the principles to which I have adverted in the beginning of this note. At all events, in respect of present incumbents, who had fulfilled the conditions entitling them by the prescription of the country to a right of occupancy, I should have felt we were bound to make good the just expectations arising out of that fulfillment. Whether we should equally have been bound to continue prospectively a custom trenching so essentially on the proprietary right is a question that need not be entered upon.

43. Because, I think, it has been abundantly shown from the foregoing recapitulation of authorities that there is no certain evidence in favor of *any fixed period* as giving a title to prescription. The best authorities speak in a very vague manner: "long possession," "occupancy for a course of years;" "continued residence;" "enjoyment of the privilege of fixed rates for length of time;" "long prescription." Such are the terms in which the requisite term of possession is usually mentioned. It is not clear on what principle Mr. Thomason, who himself uses such phrases, proposed the limit of 12 years. The existing law of limitation could, of course have had no natural application to such cases, for that law did not profess to create new rights, but only to fix existing ones; and it is clear that avowed tenancy-at-will, differing *in kind* from tenancy by right, cannot by any process or principle of natural law grow up into the latter. The recognition of any such change could only stand on custom.

Such custom established.

44. But the practice of recognizing long occupancy in any capacity (excepting in lieu of service) as conferring a prescriptive title, does exist. It is needless now to enquire into its origin, whether it is purely indigenous, and preserved as such by our early administrators, or whether it grew out of their confounding the more fixed classes of ryots with the village communities.* Whatever its source, the existence of a ryotee title by prescription is admitted by an all but universal consent; and even had it no other foundation, a right fostered, if not created, by our own practice, during the 60 years that have elapsed since the cession, unquestionably must be respected. Two questions then arise,—what should be the test of such, "length of occupancy" in determining whether any existing tenure falls under the category of "hereditary?" and second, should the application of that test be permitted prospectively?

† See, *e. g.*, Clause 9, Section 3, Regulation XLI. of 1795:—"Zemindars, putteedars, and *other* chupperbund asamees or ryots." The course of events in Bengal, where the rights of the former are alleged to have

45. In respect to the first question, there cannot, I think, be any doubt that the bare rule of 12 years occupancy was wrong; and, if so, the sooner the error is rectified, the better.

* * * * * * *

Test proposed in modification of the present law.

48. But what is the test which shall fairly represent the present custom of the country; and which, on the one hand, shall not unfairly infringe the rights of the proprietor; and, on the other, not disappoint the reasonable and just expectation of the ryot? The test must, of course, be arbitrary; but it may, notwithstanding, be more or less in accordance with the above conditions.

49. I do not think that it should be short of 25, or at least 20 years' occupancy as the minimum, and to establish the practice in each individual case, evidence of two successions should be required. The rule of inheritance should not, however, be drawn too tight; succession should be recognized in the person of any member or relative of the family who by the custom of the vicinity is entitled to succeed * If this

been too often ignored, would very naturally lead to the confounding of both classes.

Since writing this paper I have received from Mr. Cust a collection of reports on the question as it affects the Punjab. The difference between the *tabula rasa* of that province and our older acquisitions is there forcibly brought out; and yet it is very evident that an application of our North-Western Provinces rules was fast bringing the Punjab, in respect of the creation of hereditary ryots, into the precise condition we find among ourselves.

It is also remarkable that the existence of a class of hereditary and non-proprietary cultivators has been altogether denied in Oudh, which (if a correct exponent of the actual *status* of rights there) would go far to prove that at the cession from the Nawab Vizier there were no such rights in these provinces.

* A discretion should also be allowed as to changes in the fields held, where the custom of varying the lands composing an hereditary holding spoken of in paragraph 9, Circular Order, 26th September, 1856, is found, to exist.—(Page 497 of Directions to Collectors.)

test is thought too stringent, the following modification might be introduced.—25 years with one succession, or 16 years with two successions.

50. I believe that a rule to the above effect would not exclude any parties entitled as of right, by the prevalent custom, to maintain their possession: on the other hand, where a family has been in possession for at least a quarter of a century, and two successions have taken place, a strong presumption is created that the case falls within the usage of prescription—at any rate within that phase of it which has grown up under the influence of our administration: and the recognition of the right will not, I conceive, be any hardship to proprietors who have already in practice permitted so long the occupancy to continue, if not the title to grow.

51. This proposition would go to fix all who are found on any suit for ouster, or who may be registered at the general revision of settlement, as prescriptive occupants, in the enjoyment of a right of permanent occupancy at customary rates: and if any such registration could be supposed to be perfect and exhaustive, I would have been inclined to advocate that it should be held final and exclusive; that is, no future claims founded on the existence of a growth by prescription should be admitted: for I do not think that the theory of *growth* is sufficiently established to warrant the recognition of a principle so opposed to economical improvement.*

52. But I do not think that any registration made by us at the settlement can pretend to be exhaustive and complete. Even where the dearest interests are concerned, we find people indifferent and negligent in the assertion of their

* I observe it has been laid down in No. 6 of Mr. Cust's "positions" that the growth of a mouroosee right has been negatived in the Punjab. He writes:—"No new prescriptive rights of this kind are now forming; no length of occupancy by a tenant-at-will will convert his tenure to one of the higher grade."—(Collection above quoted.)

claim to their registration,—perhaps, even suspicious of our object in requiring it; and further, where large masses of cultivators are in a state of such simplicity and ignorance, it is absolutely impossible to publish any new rule of practice like that above proposed so that it shall be universally known, or to make the people alive to the necessity of registration on pain of forfeiture of their prescriptive right.

53. I would therefore, for the present, maintain the test of prescription above proposed as a prospective test for the disposal of all claims either on the part of the cultivator to be a mouroosee, or on the part of the zemindar for ouster; with this modification, that even where the test was found to hold good, it should be open to the zemindar to prove that the tenure was not, at the time of the passing of the proposed law, an hereditary tenure; which he could do by proving either that the tenure had been formed subsequently to that law, or had not been in existence under the prescribed conditions at the time of its passing.

* * * * * * * *

55. The power of the zemindar to create hereditary tenures under any circumstances should, of course, be admitted. In outlying and partially reclaimed tracts it is often by such inducements only that cultivators can be settled.

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THIRD SUPPLEMENT TO APPENDIX III.

Memorandum by Mr. W. Duthoit, Deputy Superintendent of the Family Domains of the Maharajah of Benares, on Ryot Right in those Domains.

I HAVE been desired to furnish a memorandum upon the condition of ryots under the native *regime*, with reference to the light thrown upon the subject by their present condition in the Family Domains, and its divergence from, or uniformity with, that which preceded it.

2. It will be convenient to consider—

I.—The position in which the Maharajah of Benares now stands towards those holding interests inferior to his own in the soil of the Family Domains, the privileges now enjoyed by the latter, and the mode in which the present state of things was brought about.

II.—The question whether the position of non-proprietary cultivators within the Family Domains was affected by Regulations VII. of 1828 and VII. of 1822.

III.—The evidence afforded by the records of the Benares Residency as to the condition of non-proprietary cultivators in the zemindaree before the introduction into it of our regulation system.

IV —The inferences which, with reference to our knowledge of the system of agrarian administration under Hindoo and Mussulman rule, may be drawn from the above as to the rights of cultivators at the time of our assuming the Government of Upper India.

I.

3. The Family Domains of the Maharajah of Benares consist of Pergunnahs Bhudohee and Khera Mugror in the Mirzapore, and Talooqa Gungapore (or Pergunnah Kus-

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Bhudohee originally formed part of the Sircar and Soobah of Allahabad, and Khera Mugror belonged, prior to its conquest by Bulwunt Singh in 1160 Fuslee, to Sircar Shahabad.

war Rajah) in the Benares District: their total area is 624,014 acres, and their total population, according to the last census, 399,594. Pergunnahs Bhudohee and Kuswar Rajah are densely populated,* and in a high state of cultivation. Khera Mugror, excepting at its northern extremity, is almost entirely jungle, which has, ever since the pergunnah was acquired by the Rajahs of Benares, been preserved with great care and at much expense.

4. The Rajahs of Benares were originally Zemindars of Gungapore,† where their ancestral home still exists. Munsa Ram was the first of the family who appears upon the page of history. By rendering himself useful to Roostum Ali Khan, the Nazim of the Province of Benares, he became a considerable Amil;‡ and at length, through the Nazim's interest, obtained from Sultan Mahomed Shah, both for himself and his son, the titles of Rajah and Bahadoor. Through a series of intrigues he contrived to supersede Roostum Ali Khan, and before his death, which occurred in A.D. 1733, the greater part of the province—through arrangements concluded with Nawab Abd-ool-Munsoor Khan Sufar Jung, then Soobahdar of Oudh—had passed into his hands. Munsa Ram was succeeded by his son, Bulwunt Singh, who was no less ambitious and enterprising than his father. Among the numerous acquisitions effected by him by force or intrigue were the Pergunnahs of Khera Mugror and Bhudohee. Bulwunt Singh's conduct, as regards the latter pergunnah, brought him into hostility with Ali Koolee Khan, the Soobahdar of Allahabad, against whom, however, he ultimately prevailed; and on the elevation of Nawab Soojah-ood-Dowlah to the musnud of Oudh in 1161 Fuslee, he contrived, by large pecuniary sacrifices and other means, to obtain, through the

* The population in Bhudohee is 682 to the square mile, and in Kuswar Rajah 665.

† *Vide* Sir H. M. Elliot's Supplemental Glossary, pp. 72 and 73, Article "Bhoonhar."

‡ Report by Mr. W. W. Bird, dated 25th May, 1827.

influence of that chieftain, the grant in jagheer * of those mehals, which have ever since been held by his successors under the same title; and to extend his authority to those limits in other quarters which continued until quite lately to be considered as the boundary of the Benares Province.† Bulwunt Singh joined Shah Alum and Soojah-ood-Dowlah in their invasion of Bengal in 1763. He joined the British camp with the Emperor after the battle of Buxar; and in the arrangements made with the Emperor in 1764, his zemindaree was transferred from Oudh to the British Government. The arrangements thus made were disapproved by the Home Government; and when the treaty of 1765 was concluded with Soojah-ood-Dowlah, the estate of Bulwunt Singh was restored to Oudh, the Nawab engaging to continue him in possession on condition of his paying the same revenue as before. In 1770, on the death of Bulwunt Singh, the Vizier of Oudh wished to dispossess the family; but the British Government compelled him to recognize the possession of Cheit Singh, son of Bulwunt Singh, and to grant him a sunnud‡ under their guarantee.§ On the succession of the Nawab Assof-ood-Dowlah, when the rights of sovereignty held by him over the Province of Benares were transferred to the Company, possession of the zemindaree was confirmed to Cheit Singh,‖ on whose rebellion and forfeiture in 1781 (1189 Fuslee) it was bestowed on the next lineal heir (a grandson of Bulwunt Singh's), Baboo Muheep Narain Singh, who in like manner became Zemindar of the whole Province.¶ The arrangements for the administration of Benares

* Khera Mugror is "Altumgha."

† Aitchison's "Treaties and Sunnuds."

‡ Given as No. 12 at page 42, Vol. II. of Aitchison's "Treaties and Sunnuds."

§ Report by Mr. W. W. Bird, *supra*.

‖ The sunnud is given as No. 13, at page 45, Vol. II., Aitchison's "Treaties and Sunnuds."

¶ No. 14. page 51, Aitchison, Vol. II.

made by Warren Hastings in 1781 will be seen from Clause 1, Regulation II. of 1795, the Puboolyut of Rajah Muheep Narain, * and an extract from a letter of Warren Hastings, quoted as No. 1 in Appendix C. The progress of our interference in the zemindaree will be found detailed in the Regulation above quoted, and in the papers marked 1—5 in Appendix C.

5. In 1794 it was decided to introduce the Bengal Regulations (as far as they were applicable) into the Province of Benares, and in 1795 a staff of European officials was posted to it. This measure could not, under existing arrangements, have been carried into effect without the consent of the Rajah. An agreement was accordingly made with him on the 27th October, 1794; it contained three Articles. The first provided, among other matters, that out of the surplus collections from the province over and above the forty lakhs of Rupees previously stipulated for, one lakh of rupees annually should be paid to the Rajah of Benares. The second Article provided that pottahs, receipts, and acquittances, should, as before, have the seal of the Rajah and his officers attached to them, and that the separate duftur and Treasury should be maintained as theretofore. The third Article stipulated that the Revenue Regulations should not be extended to the Family Domains of the Rajah,† in which, in consequence of objections offered by the Rajah, no mofussil or interior settlement had been made by the authority of Government.

6. The administration of justice in all matters relating to the revenue of the Family Domains was provided for in a separate enactment, Regulation XV. of 1795. By it persons residing within the Family Domains were prevented, in matters connected with revenue causes and charity ground, from

* Aitchison, Vol. II., p. 53.

† These are stated in Clause 6, Section 17, Regulation II. of 1795, to consist of "the jagheers of Bhudohee and of Khera Mugror, and of the Rajah's part of the Pergunnah of Kuswar or Gungapore, inclusive of the Talooqa of Kerowna."

making application for redress to the established Courts. Complaints connected with such cases were to be taken cognizance of by the Rajah himself in conjunction with the Collector, and in the event of any disagreement between the two, the decision was to rest with the Governor-General in Council.

7. Thus left to themselves, the Rajahs devoted their energies to extinguishing sub-proprietary rights in the Domains, and increasing their revenue demand. At the period of the general settlement the public demands from Bhudohee were rated at Rs. 3,34,000; of which Rs. 1,58,341 were remitted as jagheer; and the remainder, Rs. 1,75,659, fixed as the permanent revenue payable by the Rajah to Government. Similarly,* the revenue demand from Gungapore was Rs. 1,38,619; of which Rs. 1,27,119 was fixed as the quit-rent payable to Government.† By 1231 Fuslee, the Rajah (Oodit Narain Singh) had increased his demand on Bhudohee to Rs. 7,06,931; and in Gungapore, by 1235 Fuslee, to Rs. 1,82,053.

8. In A. D. 1826, a general appeal against the Rajah's acts was made to Government, which resulted in the appointment of Mr. W. W. Bird as Commissioner, to enquire into the grievances complained of, and eventually to the enactment of Regulation VII. of 1828, which is still in force. It was provided by that Regulation that a detailed settlement of the Family Domains should be made by the Rajah, who was "to be guided in all matters relative thereto by the general rules in force within the Province of Benares applicable to such cases."‡ These rules were afterwards decided to be those prescribed by Regulation VII. of 1822.

9. Regulation VII. of 1828 was most distasteful to the Rajah (Oodit Narain Singh), who accordingly spared no

* Mr. W. W. Bird's Report, *supra*.

† Report by Captain W. M. Stewart, dated 26th May, 1843.

‡ Clause 1, Section 5, Regulation VII. of 1828.

efforts, both here and at home, to procure its repeal. A commission, consisting of Messrs. Pakenham, Fane, and Macnaghten, was appointed in 1830 by Lord William Bentinck to discuss and decide upon the Rajah's objections. They recommended that the obnoxious regulation should be modified; and this appears to have been the view taken by the Governor-General himself. But in 1831, on the receipt of a despatch from the Court of Directors, it was decided that the settlement should at once be set on foot, under the superintendence of an European officer. The powers of Government as regards the superintendence of the Family Domains were vested in the Sudder Board of Revenue, which at that time consisted of Messrs. J. Pattle and W. W. Bird, and a Deputy Superintendent was appointed in entire and immediate subordination to them. The question of proprietary right was that to which the Deputy Superintendent's attention was more particularly directed by the Board. The logical result of the rules laid down for the decision of this question would have been a settlement with the inferior proprietors, as described in paragraph 113 of the Directions for Settlement Officers.

But the actual result of the settlement of 1832—36, as regards the inferior landholders (or "munzooreedars," as their title was then fixed), has been to place them in the position described in paragraphs 111 and 112 of the Settlement Directions. Munzooree rights were decreed in 590½ out of 2,014½ villages; but more than half of these have since been lost. The question of the rights of non-proprietary cultivators as regards the occupancy and transfer of their holdings was not to my knowledge discussed during this or any other of the subsequent settlement operations within the Family Domains.

10. By an arrangement which took effect in 1855 ten villages in Khera Mugror were made over on a "mokurraree" tenure to certain Guhurwar munzooreedars of that pergunnah, who had forfeited their "munzooree" rights for arrears of revenue.

11. There are a few maâtee villages and parts of villages the aggregate area of which is 13,394 acres: the rent-free grant of them are chiefly of a date prior to our recognition of Bulwunt Singh's title.

12. As matters now stand, the Rajah is held to be the proprietor of the soil of the Family Domains (except in the maâfee and mokurraree estates mentioned above), with the reservation of the following subordinate interests :—

1*st*,—Those of the "munzooreedars."

2*nd*,—Those of certain non-proprietary cultivators possessing rights of occupancy.

13. "Munzooreedars" possess a heritable and transferable right to collect the rents of certain estates, and to deduct a percentage of 20 per cent. for the expenses of collection and their own maintenance.

14. Cultivators having rights of occupancy are of two kinds :—

A.—Those whose right is heritable and transferable.

B.—Those whose right is heritable but not transferable.

15. Heritable and transferable rights of occupancy are *de facto* enjoyed by almost all sudder cultivators (shikmees* acquire no right by occupancy, however prolonged) in Bhudohee and Gungapore; they are of two kinds :—

A.—Ancestral, which require no explanation.

B.—Acquired, which has been done in three ways :—

1*stly*,—By transfer from the ancestral cultivator.

2*ndly*,—By obtaining possession of lapsed tenures from the malgoozar of the village. It used to, and may even now, be the custom for a malgoozar if a defaulting cultivator absconded to make over his holding to some one else who was willing to pay the whole, or as large a portion of the

* *I. e.*, sub-tenants.

balance as could be obtained. The same thing was often done sometimes for, sometimes without, a consideration, when a cultivator died without heirs. This was done both by the "munzoorcedars" and by the farmers of "na-munzooree" villages; but their power to make such arrangements is now denied, and they cannot do so except with the connivance, or from the want of vigilance, of the Rajah's officers.

3*rdly*,—By usurpation on the part of malgoozars. Formerly when land lapsed by the flight, or death without heirs, of a cultivator, the malgoozar, munzooreedar, or farmer, would, if the holding were valuable and lightly assessed, take it as his seer; and the munzooreedar, if sold up, or the farmer, on the expiry of his lease, used to retain his claim to it. Now such lands, when known, are entered as "amanee Sircar talooq malgoozar;" and the Rajah can make what arrangements he pleases about them,—either leaving them with the malgoozar and taking their rent from him, or leasing them to some one else. But, *de facto*, cultivating rights have arisen to a large extent in the way described above.

16. I have spoken of *de facto* rights, because it is an open question whether rights which have arisen in the two last named ways are *de jure* as extensive as those which are ancestral, or acquired by transfer from the ancestral cultivator. In practice they are so after the lapse of 12 years, for the possession of a cultivating tenure is supposed to carry with it all its incidents; and the only Court by which the cultivator in possession could be ousted is that of the Principal Sudder Ameen,* the action of which would be considered barred by the terms of Section 23, Regulation VII., of 1828.

* By arrangements concluded in 1845, the Courts of the native Commissioners (or Moonsiffs) in the different pergunnahs were abolished. Summary suit jurisdiction was given to the Rajah and his Revenue Officers; and a Civil Court, presided over by a Principal Sudder Ameen, was established at Konrh for the whole of the Family Domains. Appeals from orders of the Rajah and his officers lie to the Deputy Superintendent, Family Domains, as Commissioner, and from those of the Principal Sudder Ameen as Judge.

17. In some munzooree villages nearly the whole of the cultivation is in the hands of the munzooreedars and their brotherhood; but this is by no means universally the case. There is no distinction between the position of cultivators in munzooree estates and that of those in na-munzooree ones; nor between that of ex-munzooreedars (whose munzooree rights have been sold up) who retain their seer lands and that of ordinary non-proprietary cultivators, except that the seer land has, perhaps, in some instances, been more lightly assessed. A large majority of cultivators are of high castes;* but as regards rights of occupancy there is no distinction between them and low caste cultivators, although there may, perhaps, be some as to the rate at which they are assessed.

18. Cultivators in Bhudohee and Gungapore have hitherto been almost always assessed upon what is called the "motri rate" system.† The plan pursued under the system has ostensibly been to ascertain the extent of land and amount of rent recorded against a certain cultivator's name in the old rent-rolls of a certain year or certain set of years; to divide the amount of rent there found by the number of beegahs recorded as the cultivator's holding; and to treat the quotient as the cultivator's rate of rent per beegah, to be applied to any increase or decrease of his cultivation which might appear upon measurement.

19. In Bhudohee and Gungapore the right of transfer of cultivating tenures is complete and absolute; they are sold, mortgaged, given and bequeathed, or sold at auction in satisfaction of decrees, and can be transferred to the malgoozar by a process called tubdeel kasht, when an arrear of rent accrues upon them. They are very valuable: Rs. 100 per

* For proof of the statements contained in this paragraph, *vide* papers marked 23 to 25 in Appendix A. The villages the jumabundees of which are there abstracted were taken quite at random, and may be considered as fair specimens of the whole. (These, being voluminous, are not printed.)

† See Clause 2, Section 2, Regulation LI. of 1795.

beegah is a sale price which is by no means uncommon, and more is often paid.*

20. B.—Heritable non-transferable rights of occupancy are possessed by a few cultivators in Pergunnah Khera Mugror. In that pergunnah the transferable right is quite unknown, and the hereditary one nearly so. The hereditary cultivating tenures are found in a few villages at the extreme north of the pergunnah, where it adjoins Pergunnah Mujhwar, in the Benares District. Their nature has not, as far as I am aware, ever come under discussion; but were it to do so, it would, I believe, be found that they are of the two kinds described in Sections 3 and 5 of Act X. of 1859 respectively. The cultivators holding at fixed rates belong chiefly to the Coeris and other low castes.† Except from their difference from those prevailing in Bhudohee and Gungapore, these tenures present no features of interest.

II.

21. I now come to the question whether the present condition of ryots in the Family Domains has diverged from, or is uniform with, that which prevailed before Regulation VII., of 1828, was enacted, and Regulation VII. of 1822 made applicable. In considering this question, it will, I think, be convenient to look only to the rights of cultivators in Bhudohee and Gungapore, for it is there that they exist in their strongest and most interesting form.

22. I am of opinion that those rights, although, perhaps, better defined now than formerly, are as nearly as possible in the same state now as that in which they were found by Regulations VII. of 1828 and 1822.

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* See Appendix A.

† They do not, I believe, number more than 100, and appear to have held their lands for more than 70 years. The possessions of the cultivators with right of occupancy at fair and equitable rates dates, I believe, from 1841-42, when the Revenue Survey of the pergunnah took place. [Pergunnah Khera Mugror is almost entirely jungle. *Supra*, p. 101.]

23. My reasons for so thinking are—

1*st*,—That it was the agitation, not of the cultivators, but of the claimants of proprietary right, which led to the enactment of Regulation VII. of 1828. The cultivators were silent, and apparently content.

2*nd*,—The only provisions of Regulation VII. of 1828 which affect the rights of cultivators are those of Section 4, Clauses 4 and 5 of Section 5, and Sections 9, 10, 15, 16, and 20. All that is laid down in this respect in them is that all privileges formerly enjoyed by cultivators within the Family Domains, or by similar classes in the Province of Benares, were to be respected;* that all questions regarding the right to possession of khoodkasht and chupperbund ryots were to be adjusted according to the principles observed in similar cases throughout the Benares Province;† that the settlement proceedings were to embrace the formation of as accurate a record as possible of all persons found in the possession of the soil, with a specification of the nature and extent of the interests respectively enjoyed by them, and of the rates per beegah for the different descriptions of land and produce in each distinct village;‡ that the powers of distraint, &c., vested in proprietors and farmers of land within the Province of Benares might be exercised by similar persons in similar cases within the Family Domains;§ that the Rajah, in addition to those powers, was also invested with the powers of a Collector;‖ that no torture or other description of corporal punishment was to be used to enforce the payment of arrears of rent;¶ that a native Commissioner was to be maintained in each pergunnah, to take cognizance of revenue causes;** and that these persons were authorized to receive and try certain classes of suits, provided the cause

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* Section 4. † Clause 4, Sec. 5. ‡ Clause 5, Sec. 5.
§ Sec. 9. ‖ Sec. 10. ¶ Sec. 15. ** Sec. 16.

of action should have arisen within a period of 12 years before their institution.

3rd,—The Sections of Regulation VII. of 1822 which concern non-proprietary cultivators are 4, 6, 9, 14, and 20—35. It was enacted in them that the admission of particular parties to engage for the payment of revenue should not bar Revenue Officers from interfering to adjust the rights of other persons and classes;† that the Settlement Collector's proceedings should embrace the formation of as accurate a record as possible of all local usages connected with landed tenures, a full specification of all persons enjoying the possession of the soil, or vested with any heritable or transferable interest in the land or its rents; and a record of the rates per beegah of each description of land or kind of produce demandable from the resident cultivators not claiming any transferable interest in the soil—whether possessing the right of hereditary occupancy or not;‡ and that summary jurisdiction (rules for the conduct of which are given in detail) should in certain cases be exercised by Collectors, and others invested with the same powers by the Governor-General.§ No rights are declared to exist on the part of cultivators; investigation into the existence of inferior interests in the soil, and their record, if found, is all that is provided for. That this was the view taken of the provisions of this law in 1830 is plainly shown by the papers marked 10—14 in Appendix A. Mr. Bird objected to their application to the Family Domains, because they were not declaratory; and the Commission and the Governor-General advocated it, and the Rajah asked for it on the same grounds.

4th,—The papers marked 18 and 20 in Appendix A. contain all, to the best of my belief, that was ever done towards defining the right of cultivators in the Family Domains. Nothing was ever said during the early settlement operations

* Section 20. † Section 4. ‡ Sections 6, 9, and 14.
§ Sections 20—35.

"were desirous to protect and conciliate the ryots, in order to detach them from the village maliks, and because the prosperity of the pergunnahs mainly depended on their exertions."*

C.—That, owing to the large extent of land of which the Rajahs are the sole zemindars, and to the lax supervision they have always exercised over their estates, it has been a matter of convenience to maintain the fixity of cultivating tenures.

25. It may be that the vigilant control of the superintendency has had some influence upon the maintenance of the occupancy rights of cultivators; but I do not think that it has had much, for, in its earlier days, the protection of "munzooree" rights was its chief care; and since its re-establishment in 1845 the rights of cultivators (as now defined) have not, to my knowledge, been called in question.

III.

26. The records of the Benares Residency which I have had the opportunity of examining are—1*st*, correspondence and extracts from proceedings, extending from January, 1787, to November, 1799, preserved in the Commissioner's Office; and 2*nd*, a complete set of the Resident's proceedings for 1788 (with the exception of those for the months of February and September)—a volume of letters despatched and received from the 6th May, 1788, to 31st August, 1789; in all 11 folio volumes, preserved in the Collector's Office at Benares.

27. It appears from correspondence which passed in 1795 and 1797, that the Resident's proceedings from 1787 to date were then in existence, and it was proposed to entertain an establishment for copying them; but they are spoken of as being very voluminous and in great disorder, and I cannot find that the proposed copy was ever made. Judging from an examination of the records detailed above, I do not think

* Report by Mr. W. W. Bird, Special Commissioner in Bhudohee, dated 25th May, 1827.

that much light would have been thrown upon the condition of non proprietary cultivators by the older records had they been available.

28. The papers marked 1—5 in Appendix C.* will suffice, with Regulation II. of 1795, to give a general view of the state of the country, and of our interference in its Government during the years 1787—1794; in the first of which it was that the Resident began to be concerned in the collection and settlement of the revenue of the zemindaree.

29. Some of the papers contain hints (none, I am afraid, of much value) of the condition of non-proprietary cultivators as it stood under the native rule of the Rajahs of Benares. I have endeavored to be fair, at the risk of being very tedious; and the papers given may, I think, be considered as containing all that was to be found in the records I have examined at all bearing upon the question in hand.

30. The result is disappointing; but the following facts may, I think, be traced:—

1*st*,—That the Rajahs were very averse to the recognition of proprietary rights other than their own within the zemindaree.

2*nd*,—That, although zemindars and ryots are often spoken of, with reference to the amils, under the generic term of "under-tenants," and sometimes even under that of "ryots," yet there was a well understood distinction between proprietors (village maliks) and mere cultivators.

3*rd*,—That cultivators were classed in two divisions according as they resided in the village or out of it; *viz.*, "khoodkasht" and "pykasht;" and in two subdivisions, according to their castes (answering to the ashraf and arzal† of Thomason), *viz.*, "pucka" and "kutcha."

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* These are bulky, and have not been printed.

† *I. e., high caste and low caste.*

4th,—That cultivators, of whatever class, were considered as having a hold in the soil. [What this was does not clearly appear; but that some existed may, I think, be fairly inferred, from such expressions as "their cultivation," "separate culture," "land at their disposal," &c.; and from cultivators' complaints as to wrong measurement of their land and their threats of abandoning their holdings if they were not well treated.]

5th,—That the way in which the rents of all classes of cultivators were attempted to be raised was by the imposition of a cess, and not by the demand of an increase in the actual rent.

6th,—That "ashraf" cultivators were permitted to hold their lands at a lower rent than the "arzal" ones.

7th,—That the distinction between the village proprietors' seer and the other village lands was recognized, and the former allowed to be held at a lower rent than the latter.

8th,—That the country was in a very impoverished state, and the demand for cultivators greater than the supply.

IV.

31. Whatever may be the truth as to the vexed question of the property of the soil in India, it must, I think, be admitted that at the time of our first connection with Bengal and Benares "some right in the soil still belonged to the ryot."* The early regulations and the papers given in Appendix C. show plainly that it was then the custom to increase the ryot's rent by the imposition of cesses, not by the demand of additional rent in its simple form; and the argument drawn from this fact by Mill seems to me unanswerable; it must be taken as a "proof that there was once an effective limitation, or real customary rent, and that the understood right of the ryot to the land, so long as he paid

* Mr. Justice Campbell.

rent according to custom, was at some time or other more than nominal."

32. At the commencement of the latter half of the eighteenth century, Allahabad, Azimgurh, Goruckpore, and the Benares Zemindarees were all under the Government of the Nawab Vizier of Oudh; and Bhudohee was a pergunnah (dustoor) of Sircar Allahabad.* It may then, it would seem, be safely assumed that (except in local peculiarities, or those due to the characters of the amils) the condition of the agricultural population of the parts of the Nawab's dominions named above will at that time have been to all intents and purposes the same; and we may be almost certain that this will have been the case as regards that of the population of Bhudohee, with reference to that of the inhabitants of the other dustoors of the Sircar of Allahabad. How is it then that cultivator's rights, vigorous and self-sustaining in the Benares zemindaree, had to be sought out and nursed in Allahabad, Azimgurh, and Goruckpore † and are to this day weaker there than in Benares? How is it that tenant-right is so much stronger now in Bhudohee than in the pergunnahs of the present district of Allahabad? How is it, to come to later times, and nearer home, that it is strong in Bhudohee, and almost non-existent in Khera Mugror estates, belonging to the same family?

33. It is not, to my mind, any answer to these questions to say that there is a confusion of terms, and that those who are called cultivators in Bhudohee would elsewhere be styled proprietors. Strictly speaking, they may, as Mr. Maine has said,‡ be so; but that they certainly are not so in our

* Sir H. M. Elliot's Supplement Glossary, p. 323.

† Allahabad, Azimgurh, Goruckpore, and Bhudohee, were all originally inhabited by Bhurs. See paragraph 44 of Mr. Montgomery's Report on the Settlement of Allahabad; paragraph 23 of Mr. Thomason's on that of Azimgurh; and Sir H. M. Elliot's Supplement Glossary, p. 82, Art. Bhur.

‡ Paragraph 22 of his Minute dated 10th July, 1864.

Indian phraseology has, I conceive, been shown in the first part of this Memorandum and in its Appendix;* nor, certainly, is the comparatively greater vigor of tenant-right in Benares due to the action of our Government and its laws, for these have, till lately, concerned themselves with the condition of cultivators far more in the temporarily than in the permanently settled districts of the North-Western Provinces.

34. The difference between the condition of non-proprietary cultivators in Bhudohee and Allahabad, and in Bhudohee and Khera Mugror, is, in my judgment, due to the comparative weakness and strength of proprietary rights in those places respectively.

35. Proprietary right was well established in Allahabad when it came into our hands. Khera Mugror was conquered by force of arms, and the Rajahs of Benares thus became undisputed proprietors. Bhudohee, on the other hand, came into their possession chiefly by intrigue, and their hold on it for a time was almost nominal. Even when their possession had acquired strength by lapse of time and the recognition of their title, they were still unable to destroy the influence of the proprietors they had supplanted. Although the Rajahs vehemently asserted the principle that they were mere farmers, yet they were often compelled to retain the old proprietors in the management of their former estates. The Rajahs were, in short, engaged in one continued struggle to assert their proprietary right, until the British Government stepped in with Regulation VII. of 1828, and defined their rights and those of the sub-proprietors. It was during this struggle, as it appears to me, that the rights of non-proprietary cultivators in Bhudohee acquired that vigor which they have since maintained.

36. I do not mean that the rise dates only from that period. This view seems to be refuted by the papers given in

* See particularly Nos. 23, 24, and 25, of Appendix A.

Appendix B., which show that similar rights, almost as vigorous, exist elsewhere. The true conclusion seems to me to be that hereditary cultivating rights of occupancy (which in some places were also transferable) were once co-existent all over Bengal, the North-Western Provinces, and Oudh; but according as the surrounding circumstances were opposed to or favorable to their growth, died out (or very nearly so), or shot up and became vigorous. The natural result of the anarchy by which our connection with India as its rulers was ushered in would, it seems to me, be to throw power into the hands of the petty authorities of the village. "The tenant's title," to use the words of Elphinstone, "was clear as long as the demand of the State was fixed; but became vague and of no value when the public assessment became arbitrary." When in the descending scale of "rent receivers," from the Nawab to the "under-renter," each increased his demand upon the other, the cultivator was, of course, the one to suffer;* in Bengal and Benares we stepped in in time to arrest the process of destruction, and under our strong rule cultivating rights revived at once. When in the first twenty years of the nineteenth century we acquired possession of the bulk of Upper India, the process of destruction had gone further; but the plant was not yet dead. In Oudh it may well be that more than forty years of further anarchy have destroyed it altogether.† Whether our policy should be to endeavor

* See Elphinstone, pp. 71 and 72.

† I cannot help thinking, that had Warren Hastings been Governor-General during the last 15 years of the 18th century, the now vexed question of Oudh tenant right would never have arisen. His instructions to the Resident at Lucknow in 1781 (see a letter of instructions addressed by the Governor-General to Mr. Nathaniel Middleton, dated Chunar, 23rd September, 1781, published at pp. 18—20 of Hastings' Narrative, Ed. Roorkee, 1853) were as nearly as possible the same as those which he gave to the Resident at Benares in the same year. Mr. Ives, who was Resident at Lucknow during Mr. Jonathan Duncan's rule at Benares, would clearly have never thought of carrying out such instructions. Mr. Duncan's representations of the cruelties practised in Azimgurh seem to have passed unheeded, and even when the interests of the Benares zemin-

to rear it again, or to accept the fact of its destruction, depends, in great measure, upon political considerations, which it is not for me to weigh. But of two things I feel certain, *viz.*, that English notions of tenant-right are opposed to the customs of this country; and that in India, where tenant-right is strongest, there the soil will be the best cultivated."*

W. DUTHOIT,
Deputy Supdt., F. D., M. B.

MIRZAPORE,
The 19th September, 1865.

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daree were more immediately affected by the misgovernment which prevailed in Oudh, he met with little support. Lord Cornwallis's was essentially a non-interference policy. To such an extent was this principle carried, that when in 1793 the Rajah of Rewah plundered Rs. 60,000 worth of money and jewels on its way from Benares to Nagpore for the Company's use, and took no notice of two letters addressed to him by the Governor-General, it was thought "difficult to hazard an opinion how far it may be expedient to show any present resentment, either for the act of stopping and seizing the jewels, or for the insulting neglect shown in not replying to Lord Cornwallis's letters."

The energy with which the cultivation of Bhudohee is conducted has always been remarkable, and is still the admiration of all who see it. The people are turbulent; but are, as a rule, far better fed and clothed than in any of the neighboring districts.

APPENDIX A

List of Deeds of Sale registered in the Pergunnah of Bhudohee, showing the highest ana lowest prices paid for Cultivating Tenures during eight months of 1865.

Date of Registry.	No. of document in Register No. 1.	Name of Mouzah.	Quantity of Land.		Amount for which Land was sold.			Average price per Begah.			Name of Seller.	Name of Purchaser.
			B.	B.	Rs.	A.	P.	Rs.	A.	P.		
26th April, 1865	21	Gopeegunge ...	0	12	125	0	0	210	0	0	Umgun, Koeree ...	Kulunder Koongra.
27th Ditto ...	22	Ditto ...	0	18	175	0	0	195	0	0	Doakhee, Koeree ...	Ditto.
19th July, 1865...	74	Sumukdeeh ...	0	16	67	0	0	83	12	0	Ram Surn Singh Mounus.	Jeolall, Chu ar.
28th Ditto ...	78	Goloura ...	1	8½	100	0	0	70	0	0	Dyogur, Gossain ...	Churnu Kuthuk.
31st Ditto ...	86	Hurreeputtee...	10	15¼	715	0	0	63	8	0	Duleep Singh Mounus, &c.	Ram Deen Tewarry.
24th Ditto ...	76	Danceputtee ..	1	15¼	85	0	0	48	0	0	Munee Doobey ...	Sheo Narain, Aheer.
4th Ditto ...	56	Chunoura ...	8	3	65	0	0	8	0	0	Hunooman Opudhya	Nund Komar, Kayeth.
11th Ditto ...	60	Sagorpore ...	8	17	98	0	0	10	12	0	Bhowanee Deen Kewut,	Baboo Ram Shokol.
29th Ditto ...	83	Jungalpore ...	2	19	41	0	0	14	0	0	Sheo Pershad Noneah.	Sheo Ram Shokol.
	Register No. 2.				MORTGAGE BONDS REGISTERED.							
1st August, 1865	348	Boaye ...	1	5	79	0	0	67	0	0	heo Pershad Singh. Bais.	Lalla Tewarry.
Ditto ...	351	Chuk Rajah Ram,	5	2	100	0	0	20	0	0	Bisheeher Shokol ...	Ramsuhul Doobey.
Ditto ...	357	Chuk Mandhata,	1	5½	41	0	0	32	0	0	Budul, Buraye ...	Bundho, Sonar.
8th Ditto ...	367	Becaon ...	2	4½	168	0	0	77	0	0	Oudan Pandey ...	Sheobadh Pandey.
17th Ditto ...	391	Doogna ...	42	10¼	488	4	0	11	4	0	Sonaye Pandey ...	Thakoor Mota Buksh Singh.
18th Ditto ...	395	Godhna Dhoomdanuttee.	2	12¾	15	0	0	5	0	0	Mottopulut Singh ...	Sheo Ruttun Singh Bugheil.

List of Deeds of Sale registered in the Pergunnah of Kuswar, Talooqa Gungapore, showing the highest and lowest prices paid for Cultivating Tenures from January to August, 1865.

Date of Registry.	No. of document in Register No. 1.	Name of Mouzah.	Quantity of Land.	Amount for which the Land was sold	Average price per Beegah.	Name of Seller.	Name of Purchaser.
			B. B.	Rs. A. P.	Rs. A. P.		
6th July, 1865 ...	36	Jogeebur (belonging to Bhatsar.)	8 6	100 0 0	12 0 0	Gondyal Kombur ...	Puhland, Gossain.
29th Ditto ...	47	Lucktunpore ...	0 15	55 0 0	73 5 4	Deo Narain ...	Bhairo Tewarry.
1st August, 1865	51	Gujupore ...	1 16	87 8 0	50 0 0	Deo Surn Patuk ...	Chungun Misser.
Ditto ...	55	Dancopore ...	3 3	125 0 0	40 0 0	Hurhore Singh ...	Bahadoor Singh Rugho Bunsee.
Ditto ...	54	Kondurea ...	1 4	97 0 0	80 0 0	Shunker Singh ...	Madhogur, Gossain.
	Register No. 2.		MORTGAGE BONDS REGISTERED.				
1st May, 1865 ...	41	Kurdhuna ...	2 10	65 0 0	26 0 0	Sheotal Singh Raj Kouar.	Mohesh Singh.
Ditto ...	42	Kotwa ...	1 16	19 0 0	10 0 0	Mussamut Shooghra, wife of Baluk Ram.	Rammoocha Misser.
24th Ditto ...	62	Sarehra ...	10 10	500 0 0	47 8 0	Ajoodhya Singh Kunwar.	Sheo Zalim Singh, Sakirwur.
26th Ditto ...	60	Bhutsar ...	16 12	100 0 0	6 0 0	Joree Koonbee ...	Sohaye Koonbee.
9th June, 1865...	67	Tendoee ...	0 16	35 0 0	43 12 0	Agundha Singh, Bais,	Ram Pershad Singh.
24th Ditto ...	105	Buchaon ...	0 10	4 0 0	8 0 0	Shewun, Chumar ...	Sheo Dutt Singh.
4th July, 1865...	130	Thutra ...	0 10	25 0 0	50 0 0	Akoo ...	Bij Lall Doobey.
1st August, 1865	186	Koondurea ...	14 15	257 0 0	23 0 0	Shunker Singh ...	Madhogur Gossain.
Ditto ...	192	Uttersooryah ...	2 5	50 0 0	22 0 0	Sheo Pershad Singh...	Sheo Sahoy Kewut.